

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 360

FRED W. FINK, PETITIONER,

vs.

SHEPARD STEAMSHIP COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF OREGON



PETITION FOR CERTIORARI FILED OCTOBER 18, 1948.

CERTIORARI GRANTED NOVEMBER 22, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No.

FRED W. FINK, PETITIONER,

U.S.

SHEPARD STEAMSHIP COMPANY

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF OREGON

INDEX

	Original	Print
Record from Circuit Court of Multnomah County, State of Oregon	1	1
First amended complaint	1	1
Answer to first amended complaint	5	3
Verdict	7	4
Judgment	8	5
Motion for judgment notwithstanding verdict or for new trial	11	6
Letter of Judge Walter L. Tooze (omitted in printing)	17	
Order denying motions for judgment or for new trial	21	7
Memorandum opinion, Judge Walter L. Tooze	22	8
Notice of appeal	27	9
Recital as to bond on appeal	28	10
Proceedings in Supreme Court of Oregon	29	10
Opinion, Lusk, J.	29	11
Judgment	58	
Petition for rehearing	59	35
Exhibit "A"—Decision in case of Casey vs. American Export Lines in D. C. U. S., Southern District of New York	63	38
Exhibit "B"—Decision in case of Warren vs. U. S. A. et al. in D. C. U. S., Southern District of New York	64	39

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., Oct. 5, 1948.

	Original	Print
Proceedings in Supreme Court of Oregon—Continued		
Opinion, Lusk, J., on petition for rehearing	66	40
Order denying petition for rehearing	68	41
First assignment of error	69	
Order staying execution and enforcement of judgment and mandate	70	42
Defendant's exhibit "E"—Correspondence between War Shipping Administration and N. L. R. B.	71	43
Plaintiff's exhibit No. 4—Service agreement for vessels of which the War Shipping Administration is owner or owner <i>pro hac vice</i>	72	58
Plaintiff's exhibit No. 11—Minutes of Port Committee Meeting between Pacific American Shipowners Assn. and Marine Cooks and Stewards' Assn., February 2, 1945	73	70
Plaintiff's exhibit No. 3—Wage Account of Fred W. Fink, November 27, 1943	76	75
Plaintiff's exhibit No. 2—Allotment record of Fred W. Fink, June, 1943	77	76
Defendant's exhibit "H"—Correspondence between War Shipping Administration and Shepard Steamship Co.	78	77
Defendant's exhibit "J"—Letter, Thomas C. Price to American President Lines, Ltd., June 2, 1943	81	79
Defendant's exhibit "I"—Letter, American President Lines, Ltd. to Shepard Steamship Co., May 27, 1943	82	79
Defendant's exhibit "G"—Service record form	83	80
Defendant's exhibit "B"—Certificate of discharge of Fred W. Fink	85	81
Bill of exceptions	86	82
Tender of proposed bill of exceptions and acceptance of service	86	82
Judge's certificate	87	82
Letter of Judge Walter L. Tooze (omitted in printing)	88	
Motion for judgment notwithstanding the verdict or for new trial (omitted in printing)	92	
Order denying motions for judgment or for new trial (omitted in printing)	100	
Defendant's requested instruction	101	83
Stipulation re exhibits (omitted in printing)	102	
Colloquy	103	83
Witnesses		
Charles W. Atkins	105	85
Fred W. Fink	123	101
Earl Sanders	134	109
Earl Sanders	166	136
Earl Sanders	176	144
John C. Settle	146	119
John N. Sneddon	162	132
John N. Sneddon	171	149
Colloquy	208	171
Motion for nonsuit	210½	172
Decision on motion for nonsuit	210½	173

	Original	Print
Bill of exceptions—Continued		
Submission of testimony on questions of negligence and extent of injury	217	178
Testimony of John W. Dopp	220	181
Defendant's motion for directed verdict and denial thereof	222	183
Instructions to jury	223	183
Præcipe for transcript of record	227	186
Clerk's certificate	234	
(omitted in printing)		
Defendant's exhibit "C"—Operations Regulation No. 1—War Shipping Administration	235	188
Defendant's exhibit "D"—Excerpts from General Order No. 21—War Shipping Administration	247	198
Defendant's exhibit "F"—Shipping articles of S. S. George Davidson"	280	211
Defendant's exhibit "K"—Seaman's Wage Account form	285	215
Defendant's exhibit "L"—Wartimepandi agreement of December 1, 1942 (Parts I and II and addenda No. 1 and No. 2)	286	217
Orders extending time within which to file petition for certiorari	301	239
Stipulation designating portions of record to be printed	305	239
Order allowing certiorari	309	242

[fol. 1]

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

No. 154 958

FRED W. FINK, Plaintiff,

vs.

SHEPARD STEAMSHIP COMPANY, a corporation, Defendant

FIRST AMENDED COMPLAINT—Filed September 3, 1946

Comes now the plaintiff, leave of court having first had and obtained, and files this his first amended complaint, and for cause of action against the above named defendant, complains and alleges:

I

That at all times herein mentioned the defendant was and now is a corporation, organized and existing under and by virtue of the laws of the State of Maine, with a principal office in the City of Portland, Multnomah County, Oregon; that said defendant has for several years last past, and particularly on or about the 2nd day of August, 1943, engaged generally in the control, navigation, management and operation and had in its possession certain merchant steamships operating in coastwise and foreign trade in commerce, and particularly on said date was in possession of, controlled, navigated, managed and operated a certain steamship known as the SS George Davidson, and was responsible for maintaining said steamship in proper repair and for equipping said vessel.

II

That on or about the 2nd day of August, 1943, plaintiff was employed by defendant as an ablebodied seaman on said vessel, at the agreed and stipulated wage of \$100.00 per month and found and overtime and 100% bonus for sea duty; that on said date, at about the hour of 7:30 P.M., while said vessel was off the coast of Tasmania, plaintiff was ordered and directed by his superior officer to dump [fol. 2] overboard the contents of a certain garbage can on said vessel; that to accomplish said purpose, plaintiff was required to lift said garbage can, which weighed in excess

of 150 pounds, over the guardrail approximately 4 feet in height; that there was a heavy sea running at the time, and as plaintiff was lifting said can, the same was caused to be violently precipitated backward against plaintiff while he was endeavoring to control the same, resulting in injuries to plaintiff as hereinafter set forth.

III

That defendant was reckless, careless and negligent in the following particulars:

1. In ordering and directing plaintiff to empty said garbage can when there was a heavy sea running.
2. In ordering and directing plaintiff to lift and maneuver said heavy garbage can, taking into consideration the weight and bulk of the same.
3. In failing and neglecting to have sufficient workmen to perform said task, when other workmen were then and there available.

IV

That by reason of the negligence of said defendant, plaintiff suffered a severe straining, twisting and tearing of the muscles, tendons, ligaments, soft tissues and sinews of his lower back and was made to suffer and now suffers intense pain and distress in his lower back, and plaintiff was compelled to remain bedfast on board said vessel for eleven days, immediately following said accident and was hospitalized at Bombay, India, for eight days, and has since said date been under medical care; that plaintiff is informed and believes and therefore alleges that he has suffered a permanent disability and that there is a permanent weakness of the muscles, tendons, ligaments and soft tissues of his lower back, all to his damage in the sum of \$25,000.00.

V.

That prior to said injuries, plaintiff was a healthy, robust and ablebodied man of the age of 35 years, with a life expectancy of 31.78 years; that plaintiff has lost wages on account of said injuries in the sum of \$4,000.00, and has incurred doctor and medical expenses in the sum of \$50.00 and will incur further doctor, hospital and medical expenses, and reserves the right to amend his complaint at the time of trial to show the full amount of special damages.

VI

The plaintiff files this action under section 33 of the Merchant Marine Act of 1920, and elects to proceed in the Circuit Court of the state of Oregon, for the county of Multnomah, with the right of trial by jury.

Wherefore, plaintiff demands judgment against the above named defendant for the full sum of Twenty-five thousand (\$25,000.00) Dollars, general damages, and the further sum of ~~from~~ thousand dollars special damages for loss of wages, and Fifty (\$50.00) Dollars special damages, and for his costs and disbursements incurred herein:

(S.) Green & Landye & Nels Peterson, Edwin D. Hieks, Attorneys for Plaintiff.

[fol. 5] [File endorsement omitted]

IN CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

ANSWER TO FIRST AMENDED COMPLAINT—Filed September 10, 1946

Defendant Shepard Steamship Company, for answer to the First Amended Complaint, admits, denies and alleges as follows:

I

For answer to Article I of the First Amended Complaint defendant admits that it is a corporation organized under the laws of the State of Maine, but denies all of the remaining allegations of said Article, except the defendant admits that it has an office in the City of Portland, Multnomah County, Oregon.

II

For answer to Article II of the First Amended Complaint defendant expressly denies that plaintiff was employed by defendant in said vessel, or at all. Defendant denies that plaintiff was at the times mentioned in the First Amended Complaint, or at any other time, ever employed by this defendant. Defendant denies knowledge or information sufficient to form a belief as to the remaining allegations of said Article, and therefore denies the same.

III

For answer to Article III defendant denies the allegations thereof and each of them.

IV

For answer to Article IV defendant denies the allegations thereof and each of them.

[fol. 6]

V

For answer to Article V defendant denies knowledge or information sufficient to form a belief as to plaintiff's health, age and life expectancy, and therefore denies the same, and defendant expressly denies the remaining allegations of said Article V.

VI

For answer to Article VI defendant admits that plaintiff has filed this action in the Circuit Court of the State of Oregon, for the County of Multnomah, and admits that plaintiff has attempted to file this action under Section 33 of the Merchant Marine Act of 1920, but defendant denies that plaintiff has the legal right to bring this action in this Court or under said statute.

Wherefore, Having fully answered plaintiff's First Amended Complaint, defendant prays that plaintiff take nothing and that defendant may have judgment for its cost and disbursements incurred herein.

(S.) Wood, Matthiessen & Wood, (S.) Erskine B. Wood, Attorneys for Defendant.

Duly sworn to by Earl Sanders. Jurat omitted in printing.

[fol. 7]

[File endorsement omitted]

IN CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

VERDICT—Filed September 18, 1946

We, the jury, duly empanelled and sworn to try the above entitled civil action, do find our verdict in favor of the plain-

tiff Fred W. Fink, and against the defendant Shepard Steamship Company, a corporation, and assess plaintiff's damages in the sum of \$9000.00.

Dated this 17th day of September, 1946.

(S.) Robert A. Pitts, Foreman.

[fol. 8]. IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR
THE COUNTY OF MULTNOMAH

FRED W. FINK, Plaintiff,

v.

SHEPARD STEAMSHIP COMPANY, a corporation, Defendant

JUDGMENT—Filed September 18, 1946

This cause having come on for trial on Thursday, the 12th day of September, 1946, before the Honorable Walter L. Tooze, Judge of the above entitled Court, plaintiff appearing in person and by his attorneys Green & Landye, Nels Peterson and Edwin D. Hicks, defendant appearing by his attorneys Wood, Matthiessen and Wood and Erskine Wood, Jr., and the Court having first received evidence covering the question whether plaintiff had the legal right to bring this action against the defendant pursuant to the provisions of Section 33 of the Merchant Marine Act of 1920, otherwise known as the Jones Act, and the Court having determined as a matter of law, from the evidence received upon the trial of such issue that the plaintiff had the legal right to maintain this action against the defendant company under said act aforesaid, and on the 16th day of September, 1946, a [fol. 9] jury having been duly impaneled and sworn to try the questions of fact applicable to said cause, did hear the opening statements of the respective counsel, the testimony produced on behalf of the plaintiff and the testimony produced on behalf of the defendant, whereupon the jury, having heard the closing arguments of respective counsel and having been instructed by the Court as to the law, the jury did thereupon retire for its deliberation upon the 17th day of September, 1946, and upon said 17th day of September, 1946, did return its verdict in favor of the plaintiff, Fred W. Fink, and against the defendant, Shepard Steamship Company, a corporation, which said verdict was received by

the Court and is now on file with the Clerk of the above entitled cause as a part of the records herein, said verdict being in words and figures as follows:

"We the jury, duly impaneled and sworn to try the above entitled civil action, do find our verdict in favor of the plaintiff, Fred W. Fink, and against the defendant, Shepard Steamship Company, a corporation, and assess plaintiff's damages in the sum of Nine Thousand Dollars (\$9,000.00).

Dated this 17th day of September, 1946."

Robert A. Pitts (signed), Foreman.

Now, therefore, based upon said verdict, the Court does hereby enter its judgment herein in favor of the plaintiff, Fred W. Fink, and against the defendant, Shepard Steamship Company, a corporation, for the full sum of Nine Thousand Dollars (\$9,000.00), with interest thereon at the rate of 6% per annum from the date of the entry of this [fol. 10] judgment, and for costs in the sum of — Dollars, to be taxed with interest thereon at the rate of 6% per annum from the date of the entry of this judgment and that execution issue therefor.

Dated at Portland, Oregon, this 18th day of September, 1946.

Walter L. Tooze, Circuit Judge.

[fol. 11]

[File endorsement omitted]

IN CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

OR IN THE ALTERNATIVE

MOTION FOR NEW TRIAL—Filed September 26, 1946

Defendant moves that the judgment entered in this cause in favor of the plaintiff and against the defendant be set aside, and that judgment be entered in favor of the defendant notwithstanding the verdict rendered by the jury upon the following grounds:—

1. The Court should have granted defendant's motion made at the trial for judgment of involuntary non-suit, for the reason that plaintiff's evidence failed to show that de-

defendant was plaintiff's employer, and plaintiff therefore failed to establish his right to sue this defendant as an employer under the Jones Act, sec. 33 of the Merchant Marine Act of 1920, Title 46 USCA sec. 688, and which grounds were more fully stated at the trial at the time of defendant's motion for judgment of involuntary non-suit.

2. The Court should have granted defendant's motion for judgment of involuntary non-suit made at the trial for the reason that plaintiff's case did not present substantial evidence of negligence on the part of the defendant to warrant submitting the issue of negligence to the jury, and which grounds were more fully stated at the trial at the time of defendant's motion for judgment of involuntary non-suit.

3. The Court should have granted defendant's motion for a directed verdict, which was made at the trial, for the [fol. 12-20] reason that under the evidence as a matter of law defendant was not the employer of the plaintiff within the terms of the Jones Act, and therefore plaintiff had no right to sue this defendant pursuant to the Jones Act, sec. 33 of the Merchant Marine Act of 1920, Title 46 USCA sec. 688, and which grounds were more fully stated at the trial of this cause.

4. The Court should have granted defendant's motion for a directed verdict made at the trial for the reason that there was no substantial evidence of negligence on the part of the defendant, and which grounds were more fully stated at the trial.

[fol. 21] IN CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

ORDER DENYING MOTIONS FOR JUDGMENT OR FOR NEW TRIAL

This matter coming on to be heard on motion of defendant for judgment notwithstanding the verdict and/or in the alternative for motion for new trial, and the Court having considered said motions respectively and the arguments of counsel proffered for and against the allowance of the same and the Court having, as of October 5, 1946, rendered its written opinion in respect to the issues arising upon such motions and the Court being otherwise fully informed in the premises, it is hereby

Ordered that the motion for judgment notwithstanding the verdict be and the same is hereby denied; it is further
Ordered that the said motion for new trial be and the same is hereby denied,

Dated this 14th day of October, 1946.

(sgd.) Walter Tooze, Circuit Judge.

[fol. 22]

MEMORANDUM OPINION

CIRCUIT COURT OF OREGON, FOURTH JUDICIAL DISTRICT

Department No. 8, Portland, Oregon

5 October 1946.

WALTER L. TOOZE, Judge,

Wood, Matthiessen & Wood, Attorneys at Law, 1310 Yeon Building, Portland, Oregon.

Green & Landye, Attorneys at Law, Corbett Building Portland, Oregon.

No. 154,958

GENTLEMEN:

Re: *Fink v. Shepard SS Co.*

This matter is before the court upon defendant's Motion for Judgment Notwithstanding the Verdict or in the alternative Motion for New Trial.

Specifications Nos. 1, 2, 3 and 4 raise two distinct points, viz: Was plaintiff an employee of the defendant within the meaning of the Jones' Act, and if he was, is there sufficient substantial evidence in the record to establish negligence upon the part of the defendant.

As to the status of the plaintiff, the court gave this question very careful study and consideration during the trial of the case, and arrived at the conclusion that under the provisions of the Agency Agreement, the defendant was an owner pro hac vice, and for the purposes of this case the employer of plaintiff within the meaning of the Jones' Act. I find no substantial cause for changing that opinion. The [fol. 23-25] Clarification Act did not change in any respect the terms and conditions of the General Agency Agreement. If under those provisions, the so-called Agent was an owner pro hac vice as suggested by Mr. Justice Douglas in his

concurring opinion in the Hust case, such Agent continues to occupy that status under the same terms and conditions of the Agency Agreement, and such status is in no way affected by the provisions of the Clarification Act. With that in mind, this court concluded at the time of trial: "It is this court's conclusion that under the ~~Hyst~~ decision, all seamen employed on a vessel operated by a Steamship Company under a General Agency Agreement such as is involved here, are employees of such General Agent, and may proceed at law and have a jury trial in all cases such as this, pursuant to the provisions of the Jones' Act." This disposes of specifications Nos. 1 and 3 of the Motion.

As to specifications 2 and 4, the court is firmly of the opinion that there was sufficient and substantial evidence on the trial to establish negligence on the part of defendant in one or more respects as charged in plaintiff's amended complaint, if the jury believed such evidence. The verdict in favor of the plaintiff would indicate such conviction on the part of the jury, and such verdict is conclusive upon this question.

The four specifications already noted were urged in support of defendant's motion for Judgment notwithstanding the verdict. That motion is denied.

[fol. 26] For the reasons stated, the Motions of the defendant will be denied, and defendant will be allowed exceptions to the court's rulings.

Very truly yours, Walter L. Tooze, Circuit Judge.

[fol. 27] IN CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed November 15, 1946

To Fred W. Fink and Green and Landye, B. A. Green and Edwin D. Hicks his attorneys:

You, and each of you, are hereby notified that in the above entitled cause of Fred W. Fink, Plaintiff, vs. Shepard Steamship Company, a corporation, Defendant, in the Circuit Court of the State of Oregon for the County of Multnomah an appeal is taken by defendant, Shepard Steamship Company, to the Supreme Court of the State of Oregon from the Judgment for Nine Thousand and no/100 (\$9,-

000.00) Dollars, with interest and costs, in favor of plaintiff and against defendant, entered in this court and cause the 18th day of September, 1946; and also from the Order entered in this Court and cause on the 14th day of October, 1946 denying defendant's motion for judgment notwithstanding the verdict or in the alternative for a new trial.

Dated November 15th, 1946.

Wood, Matthiessen & Wood, Erskine B. Wood, Attorneys for Defendant.

[fol. 28] Service of the foregoing notice accepted this 15th day of November, 1946.

Green & Landye, By B. A. Green, Edwin D. Hicks, THT.

On November 20, 1946, an Undertaking on appeal was duly filed, and copy thereof included in the transcript on appeal.

[fol. 29] IN THE SUPREME COURT OF OREGON

FRED W. FINK, Respondent,

v.

SHEPARD STEAMSHIP COMPANY, a corporation, Appellant

Appeal from Circuit Court, Multnomah County

WALTER L. TOOZ, Judge.

Argued and submitted March 4, 1948.

Erskine B. Wood, of Portland, argued the cause for Appellant. With him on the brief were Wood, Matthiessen & Wood, of Portland.

Edwin D. Hicks, of Portland, argued the cause for Respondent. With him on the brief were Green & Landye, Nels Peterson, and Thomas H. Tongue III, of Portland.

H. G. Morison, Acting Assistant Attorney General of Washington, D. C.; Henry L. Hess, United States Attorney, of Portland; J. Frank Staley and Leavenworth Colby, Special Assistants to the Attorney General, Attorneys for the United States, of Washington, D. C., filed a brief for the United States as amicus curiae, urging reversal.

Lasher B. Gallagher, of Los Angeles, filed a brief as amicus curiae, urging reversal.

Before Rossman, Chief Justice, and Lusk, Belt, Kelly, Bailey and Brand, Justices.

Lusk, J.

Reversed.

OPINION

[fol. 30] Lusk, J.

This case, like *Hust v. Moore-McCormack Lines*, 328 U. S. 707, 90 L. ed. 1534, 66 S. Ct. 1218 (reversing 176 Or. 662, 158 P. (2d) 275), is concerned with the rights of seamen to recover for injuries sustained while employed on United States vessels as employees of the United States. There is but one point of difference: *Hust* was injured a few days before March 24, 1943, the effective date of Public Law 17 (78th Cong., 57 Stat. 45), otherwise known as the Clarification Act; while the plaintiff *Fink* was injured on August 2, 1943, after the act became effective.

Fink recovered a judgment based on the verdict of a jury from which the defendant has appealed. The principal question for decision here, as in the *Hust* case, is whether the plaintiff is entitled to maintain his action under the Jones Act, Act of March 4, 1915, 38 Stat. 1185, as amended June 5, 1920, 41 Stat. 1007 (46 U. S. C. 688), with right to trial by jury, or whether his sole remedy is in the federal court against the United States under the Suits in Admiralty Act, 41 Stat. 525 (46 U. S. C. 741). The question was raised on the trial by motions for nonsuit and a directed verdict, and later by motion for judgment notwithstanding the verdict, and the court's rulings denying these motions are assigned as error.

Plaintiff was an able-bodied seaman on the S. S. *George Davidson*, a Liberty ship owned and operated by the United States through the War Shipping Administration. The defendant steamship company managed certain business of the vessel as General Agent for the Administration under a General Agency Service Agreement designated "GAA 4-4-42," identical with that involved in the *Hust* case. Plaintiff was injured while the vessel was at sea as the result, he claims of the negligence of his superior officer in [fol. 31] ordering him, unaided, to dump overboard the contents of an excessively heavy garbage can at a time when a strong sea was running.

It is the contention of the plaintiff that the Hust case, which held that a seaman injured under like circumstances was entitled to sue and recover from the agent under the Jones Act in a state court, with the right to trial by jury, controls the decision here. The defendant, on the other hand, asserts, first, that this case presents a question which the Supreme Court of the United States expressly declined to decide in the Hust case, namely, the effect of the Clarification Act upon seamen's remedies with respect to injuries incurred after March 24, 1943, and that the purpose of that act was to remit the injured seaman for vindication of his rights to a suit under the Suits in Admiralty Act against the United States in the federal court; and, second, that in any event, the Hust decision has been overruled by the later decision in *Caldarola v. Eckert*, 332 U. S. 155, 91 L. ed. 1566, 67 S. Ct. 1569. The ultimate position of the defendant is supported by a brief filed by the United States as *amicus curiae*, the reasoning in which, however, is very different in some respects from that of counsel for the defendant.

For a solution of these questions a careful examination of the ground of decision by the Supreme Court of the United States in the Hust case is necessary. As a background for that examination we start with a brief statement of what this court held when the case was before it. From an analysis of the terms of the agency agreement and a consideration of the evidence relating to the functions actually performed by the agent, we reached the conclusion that Hust was not an employee of the agent, but exclusively of the Government. It followed, in our view, that the remedy [fol. 32] given by the Jones Act, which was created only in favor of an employee against his employer for the latter's negligence, was not available to Hust in an action against Moore-McCormack. In reaching that conclusion we applied the familiar common law test for determining whether one is an employee of another, namely, "whether the latter has the right to order, direct and control the former in the performance of the work" (176 Or. 670). We held, further, that the General Agent was not owner of the vessel *pro hac vice*. There the opinion might have stopped but for the argument of the plaintiff that Congress had recognized the status of seamen on Government-owned vessels as employees of the agents in section 1 of the Clarification Act, here-

inafter set out. Upon this point this court held that the Act did not deal with the liability of agents. We said:

"We do not mean to suggest that the purpose of the law was to grant to agents immunity from suit for their own torts, but simply that it leaves the question of the agents' liability untouched. It does not purport to create between the seamen and general agents of the War Shipping Administration a relationship of employer and employee, which, but for the Act, would not exist, nor to impose upon such agents liability for a tort which they did not commit. The whole purpose and intent of Section 1, in our opinion, was to create and declare in favor of seamen employed by the United States rights and remedies against the United States." (176 Q.R. 689.)

Entertaining these views, it became unnecessary for us to express an opinion as to whether the so-called retroactive provision of the Clarification Act, hereinafter set forth, upon which the decision of the Supreme Court of the United States to some extent turned, gave Hust an election to pursue a remedy which we had already held was never available to him.

The Hust case was decided in the Supreme Court of the United States by a bench of seven judges. It was a four [fol. 33] to three decision. The opinion of the court was written by Mr. Justice Rutledge and concurred in by Justices Black, Douglas and Murphy. In addition, Mr. Justice Douglas wrote a concurring opinion in which Mr. Justice Black joined. A dissenting opinion by Mr. Justice Reed was concurred in by Justices Frankfurter and Burton.

The opinion of Mr. Justice Rutledge proceeds upon the following grounds: Prior to 1942, when the Government took over practically the entire merchant marine, seamen employed on vessels of the United States operated by private companies were even more favorably situated than privately employed seamen. The latter had their remedy under the Jones Act, and their rights under general maritime law and enforceable in admiralty, or by various forms of proceeding elsewhere. But seamen on Government vessels had not only their exclusive remedy against the Government or the appropriate governmental corporation under the Suits in Admiralty Act, but as well their rights under maritime law against the private company operating the

vessel as agent for the Government, including the right to sue the agent under the Jones Act. This latter right was one of the effects of the decision in *Brady v. Roosevelt* S. S. Co., 317 U. S. 575, 87 L. ed. 471, 63 S. Ct. 425., The *Brady* case had overruled the decision in the *Lustgarten* case, reported under the name of *Johnson v. Fleet Corp.*, 280 U. S. 320, 74 L. ed. 451, 50 S. Ct. 118, that the remedy given by the Suits in Admiralty Act was intended to preclude suit against the agent. But to hold that *Hust* could not sue the agent under the Jones Act would be to restore the rule of the *Lustgarten* case and to overrule the *Brady* case. There must be more than mere implication for the destruction of settled rights. The conjunction of the acts of the Government in taking over the merchant marine, with the Suits in Admiralty Act, is not sufficient basis for holding that it was the intention of Congress, or Congress and the President, to deprive seamen on United States vessels of any of the rights enumerated. This is especially true in view of uncertainties and possible hardships which would result from such a decision. While *Hust*, as the Supreme Court of Oregon held, may have been technically an employee of the United States, yet, within the spirit of the Jones Act, the agent was sufficiently his employer to be suable under that act, citing *Labor Board v. Hearst Publications*, 322 U. S. 111, 88 L. ed. 1170, 64 S. Ct. 851. The technical relation of employer and employee had been shifted from the General Agent to the Government "for purposes relevant to ultimate wartime control of marine employees, without at the same time disrupting their normal applicable rights and remedies." It is a fallacy to say that the case is governed by the common law rules of private agency, more particularly the test of ultimate control over the acts of the alleged employee.

This view, the opinion continues, is confirmed by the so-called retroactive or elective provision of section 1 of the Clarification Act, which reads:

"Any claim, right, or cause of action of or in respect of any such seaman accruing on or after October 1, 1941, and prior to the date of enactment of this section may be enforced, and upon the election of the seaman or his surviving dependent or beneficiary, or his legal representative to do so shall be governed, as if this section had been in effect when such claim, right, or cause of

action accrued, such election to be made in accordance with the rules and regulations prescribed by the Administrator, War Shipping Administration.

The fact that Congress has given this election to seamen whose causes of action arose before the Clarification Act became effective, shows that the Suits in Admiralty Act was not intended to be the exclusive remedy in such cases. Otherwise there would be no election. Although Congress [fol. 35] did not enumerate the specific rights which it considered seamen to have prior to the Clarification Act, and after the industry's transfer to Government control, the intent was clear to preserve all such rights and remedies as may have remained in existence unaffected by the transfer, including the rights and remedies provided by the Jones Act. This result accords with various provisions of the General Service Agreement. The Clarification Act in its prospective operation is not before the court, and no suggestion is made as to its effect on seamen's rights.

Mr. Justice Douglas, in his concurring opinion, concluded from an examination of the provisions of the General Service Agreement that the General Agent "had a most substantial control over the operations of the vessels"; that it was in fact owner of them *pro hac vice*, and was "therefore the employer and responsible for this personal injury claim."

The dissenting opinion of Mr. Justice Reed denied liability of the General Agent for reasons substantially the same as those which this court expressed. He called attention to the Supreme Court's holding in *Robinson v. Baltimore & Ohio R. Co.*, 237 U. S. 84, 94, 59 L. ed. 849, 35 S. Ct. 491, that "Congress used the words 'employe' and 'employed' in the statute (i. e. the Jones Act) in their natural sense, and intended to describe the conventional relation of employer and employe." He said that under the agency contract the agent only managed certain matters connected with the ship for the United States, and made the crew available to the Master, a United States agent, for employment by the Master for the account of the United States. "Such a contract makes the United States the employer under the Merchant Marine Act, not the Master and not respondent, the General Agent." (p. 740) Referring to section 2 of the Suits in Admiralty Act, which gives to employees of the United States upon merchant vessels of the United States a right of action against the vessel to be

[fol. 36] enforced by a *libel in personam* in admiralty, without right to trial by jury, and to the doubts which sometimes arose when the War Shipping Administration became the operator of practically the entire merchant marine as to whether a particular vessel was a merchant vessel or not, he said:

“Therefore to clarify this situation and to assure all ‘employees of the United States through the War Shipping Administration’ all ‘rights’ for ‘injuries’ applicable to seamen ‘employed on privately owned and operated American vessels,’ Congress enacted an act to clarify the law relating to functions of the Administration (the Clarification Act), and declared its purpose in no uncertain terms to grant the power to enfoye these rights only through the Suits in Admiralty Act.” (pp. 741, 742.)

Of the retroactive provision of section 1 of the Clarification Act he said:

“As there might be instances where a seaman was an employee of the Administration but his boat was not a merchant vessel of the United States, the Clarification Act of March 24, 1943, was made retroactive to October 1, 1941. Probably other compensation for injuries may have existed prior to the enactment of this Act.” (p. 744)

Mr. Justice Reed thought that the majority misconceived the effect of the Brady case. He took the view, as we had, that it did no more than to hold that actions could be maintained against agents of the United States at common law for the agent’s own torts, and that a denial of Hust’s right to sue the agent under the Jones Act did not restore the rule of the Lustgarten case. “We do not think the requirement that seamen, employees of the United States, must seek their remedy against their employer under the Suits in Admiralty Act has any relation to the Lustgarten or Brady cases.” (p. 745) There was nothing to prevent Hust from suing the agent for its own tort, but he could not “hold respondent liable as employer for negligence [fol. 37] of petitioner’s fellow servants, of petitioner’s superiors or the Master under the Merchant Marine Act.” (p. 747)

“ * * * There is here no ‘disruption’ of the normal and past relationship between seaman and employer. This Court errs, we think, in suggesting any seaman has been deprived of any right by the Clarification Act of 1943 under the construction of the Oregon Supreme Court. No seaman ever had a right of recovery under the Merchant Marine Act except against his employer. That the seaman still has. . . .

“ What the Clarification Act does, and what it obviously was intended to do * * * was to continue the policy of requiring seamen who were employees of the United States to continue to vindicate those rights through the Suits in Admiralty Act.” (p. 748)

The minority took issue with the *pro hac vice* theory, saying:

“ * * * But a charterer or owner *pro hac vice*, who is also an employer, is one who takes over ‘the exclusive possession, command, and navigation of the vessel.’ Reed v. United States, 11 Wall. 591, 600. That is a bareboat charter. Under the contract in this case, the respondent had no such authority. As we have pointed out above, and as the contract shows, he acted for the United States under its command and then only in certain matters not connected with actual navigation.” (p. 747)

In the light of the foregoing analysis of the opinions in the Hust case, we will consider first the defendant’s contention that that case has been overruled by Caldarola v. Eckert, *supra*. The Plaintiff there was not a seaman but a longshoreman. He was not an employee of the defendants, the General Agents. The following statement of the facts is taken from the opinion of the court:

“ The S. S. Everagra is owned by the United States and managed in its behalf by the respondents as General Agents. On January 27, 1944, the Everagra, docked in the North River, New York City, was being unloaded by a stevedoring concern, the Jarka Company. Jarka did the unloading under a contract with the United States, negotiated through the War Shipping Administration. One of its provisions was that ‘the Administrator shall furnish and main-

tian in good working order all necessary equipment. Caldarola, the petitioner, was an employee of Jarka. In the course of his work on the vessel he was injured. He brought this action in the New York courts against the respondents, claiming that his injury was caused by a defective boom and that they were liable for failing in their duty as agents to maintain it in sound condition."

The Supreme Court of the United States affirmed a judgment of the Court of Appeals of New York in favor of the agents. Under New York law liability in tort by the agents for Caldarola's injury would only arise where there is possession and control of premises on which injury occurs due to negligence in their maintenance. Hence, it became necessary to examine the terms of the General Service Agreement to determine as a question of federal law whether, on a fair reading of the contract, the agents were in possession and control of the S. S. Everagra. As to this the court said:

" * * * The United States, as *amicus curiae*, submitted what we deem to be conclusive considerations against reading the contract so as to find the Agents to be owners *pro hac vice* in possession and control of the vessel. The consequences, to both the national and international interests of the United States, of such a construction would be too far-reaching to warrant such a forced reading merely in order to have a basis on which to build liability under the common law of New York. Serious issues affecting the immunity of government vessels in foreign ports as well as immunity from regulation and taxation by local governments would needlessly be raised. After all, the question is not whether petitioner may be compensated for his injury. Congress has made provision for that. Petitioner insists, in order to enable him to sue in the courts of New York, that the Agents are to be deemed, as a matter of federal law, owners of the vessel *pro hac vice* and, therefore, as a matter of state law, subject to the duties of such ownership under New York law toward business invitees. We reject this construction."

[fol. 39] The opinion then continues:

"Our previous decisions do not require it. *Hust vs. Moore-McCormack Lines*, *supra*, arose under the Jones Act (Act of March 4, 1915, 38 Stat. 1185, as amended, June 5, 1920, 41 Stat. 1007). We there held that under the Agency contract the Agent was the 'employer' of an injured seaman as that term is used in the Jones Act, and a seaman could therefore bring the statutory action against such an 'employer.' The court did not hold that the Agency contract made the Agent for all practical purposes the owner of the vessel. It did not hold that it imposed upon him, as a matter of federal law, duties of care to third persons, more particularly to a stevedore under employment of a concern unloading the vessel pursuant to a contract with the United States.

"*Brady vs. Roosevelt Steamship Co.*, 317 U. S. 575, 1943 A. M. C. 1, is likewise remote from the issues decisive of this case. It merely held that the Suits in Admiralty Act, by furnishing an *in personam* remedy against the United States, did not free the Agent from liability for his own torts. The *Brady* case did not reach the 'different question' whether 'a cause of action' against the Agent had been established. 317 U. S. at 585. That is the precise question here, and more particularly, whether the contract created a relationship from which, under New York law, liability as to business invitees followed."

The opinion of the court was written by Mr. Justice Frankfurter and concurred in by the Chief Justice and Justices Reed, Jackson and Burton. Thus, the three justices who dissented in the *Hust* case became a part of the majority of the full court which decided the *Caldarola* case, while the four justices who constituted the majority in the *Hust* case all dissented on grounds which, to a large extent, formed the basis of the prevailing opinions in the *Hust* case. They took emphatic issue with the majority's interpretation of the *Brady* case.

We are urged to declare that this decision overrules the *Hust* case because, contrary to what the majority of the seven-judge court then held, it determines, first, that, under [fol. 40] the General Service Agreement, agents are not owners *pro hac vice* of Government vessels, and, second,

that the Brady case merely held that the Suits in Admiralty Act did not free the agent from liability for his own torts.

Great stress was laid on the Brady decision in both reversing opinions in the Hust case, while the *pro hac vice* doctrine was the principal ground on which Mr. Justice Douglas thought that liability of the agent should be sustained. But we cannot say that the Hust case has been overruled because it has now been determined that a majority of a seven-member court misconceived the effects of the Brady decision, and that two justices erroneously thought that the agent was in possession and control of the vessel. All we can say is that two of the props of the Hust decision have been removed. The Supreme Court of the United States did not avail itself of the opportunity offered it to overrule its prior decision, but distinguished it.

While the basis on which the majority sustained liability in the Hust case is not clear to us, it was made sufficiently clear that the question was not governed by common law principles. With no statement by the court which rendered the decision that that view has been abandoned, it would be presumption on our part, under the circumstances, to say that the decision has been overruled.

Closely allied to the foregoing contention is the argument pressed upon us in the brief of the United States in substance as follows: By the Calderola case it is established that the agent is not the owner *pro hac vice* of the vessel, and does not possess, operate or control it. The general rule of law is that the employer is not liable for the negligent acts of his employee unless at the very time that the act is committed the latter is engaged in the service of the [fol. 41] former. If he is not, and the employee at that time is performing services for someone else, than that other, not the general employer, is responsible for the consequences of the employee's negligent conduct. *Denton v. Yazoo & M. V. R. Co.*, 284 U. S. 305, 76 L. ed. 480, 29 S. Ct. 252. And the question as to whose work is being performed is usually answered, as stated in the Anderson case, "by ascertaining who has the power to control and direct the servants in the performance of that work." Conceding that, generally, for the purposes of the Jones Act, as the Hust case seems to hold, the master and crew of the S. S. George Davidson were employees of Shepard Steamship Company, still, at the time of the injury to Fink, they were not performing services for the defendant, but for the United States, which,

through the War Shipping Administration, was operating the vessel and was in the exclusive possession and control of it.

The legal principles relied on in the Government's brief are well settled. They have the sanction of the Supreme Court of the United States. In the Anderson case the court said regarding the reason of the rule of a master's liability for the negligence of his servant:

" * * * In substance, it is that the master is answerable for the wrongs of his servant, not because he has authorized them nor because the servant, in his negligent conduct, represents the master, but because he is conducting the master's affairs, and the master is bound to see that his affairs are so conducted that others are not injured. * * * The master's responsibility cannot be extended beyond the limits of the [fol. 42] master's work. If the servant is doing his own work or that of some other, the master is not answerable for his negligence in the performance of it."

The Supreme Court applied these rules to the United States in the Yazoo case when it held that the railroad was not responsible for the negligence of a porter whom it employed and paid, but who, at the time the negligent act was committed, was engaged in loading United States mail into a mail car under the direction of a United States postal transfer clerk. This is the so-called *lent servant* doctrine.

As further support for its position the Government's brief calls attention to the provisions of Article 3A (d) of the General Service Agreement set out in the margin.* It

* The converse of this proposition is stated by the Circuit Court of Appeals for the 2d Circuit in *Militano v. United States*, 156 F. (2d) 599, which was decided after *Hust* and before *Caldarola*, and involved facts like those in the latter case. In sustaining liability of the agent the court said: "If the agent remains the employer sufficiently to be liable to members of the crew under the Jones Act, we think it cannot escape the duties of an owner *pro hac vice* in other respects."

* "The General Agent shall procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee

is said to be the well-settled rule that the agent procuring the employment of others in such a manner is not responsible for the torts of such employees, and counsel for the Government cite, sec. 79, Comment (a), Restatement, Agency, which reads:

“• • • The agents so employed are the agents of the principal and not of the employing agent, who is not responsible to them for their compensation unless he so manifests, and is no more responsible for their conduct to third persons or to the principal than he is for the conduct of other agents of the principal, unless he is negligent in their selection.”

[fol. 43] However convincing these arguments might be in other circumstances, we think that they could be more appropriately and perhaps more effectively addressed to the Supreme Court of the United States. For, in the opinion of Mr. Justice Rutledge in the *Hust* case, the test of ultimate control over the seaman in the performance of his work, which this court thought was the determining factor, was rejected. It was said to be a “fallacy” to assume that “the case would be controlled by the common law rules of private agency” (328 U.S. 724). And the very section of the Restatement of Agency upon which counsel rely was cited by this court in support of its conclusion that the agent was not responsible for the negligence of the master, the boatswain, or other seamen on the vessel (176 Or. 696). The Supreme Court of the United States, however, did not

of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder.”

mention the rule of the Restatement and obviously considered it to be without bearing on the question.

But it is argued by the Government that the instant case is to be distinguished from the Hust case for two reasons, first, because of an "admission" in the answer in the Hust case that the defendant "operated" the vessel, and, second, because the Hust case did no more than decide that the injured seaman was free to bring his action under the Jones Act and did not hold that the agent was vicariously responsible for the tortious acts of the master or boatswain, which is the negligence alleged here. We cannot agree. The admission in the answer in the Hust case was construed by this court to go "no further than to admit operation of the vessel to the extent authorized by the agreement and to the exclusion of any control of the vessel or authority over the crew" (176 Or. 696). The alleged admission was not referred to in any of the opinions of the Supreme Court of the United States, and we can find nothing in the prevailing opinions which would indicate that it was relied on as [fol. 44] a basis for decision. The other claimed point of difference does not exist, for the negligence in the Hust case was of precisely the same character as that alleged here, namely, the negligence of the master, the boatswain, and perhaps other members of the crew (176 Or. 695). The Supreme Court of the United States so treated the case. The problem was one of vicarious responsibility (328 U. S. 712, 713, 724).*

* It is said in the Government's brief: "For reasons not susceptible of precise analysis the Rutledge opinion concluded that suit under the Jones Act was available to plaintiff and the cause was remanded for further proceedings (328 U. S. at 734)." To the foregoing the following footnote is appended: "Settlement was subsequently authorized by the United States without the case being returned to the Supreme Court. Accordingly, it was not until Calderola that it was known that the new five judge majority regarded the opinion of the old four judge majority as turning on the concession that Moore-McCormack was *operating* the vessel." On the remand of the Hust case two questions were presented by Moore-McCormack: (1) That the Supreme Court decision did not determine the question of the agent's liability; (2) that the verdict was excessive. We held adversely to Moore-McCormack on the first ques-

Furthermore, no distinction can be validly drawn between this and the Hust case based upon the functions actually performed by the agents. In the latter case there was a claim that the evidence showed *de facto* control of the vessel. We held against that contention, and the majority opinion of the Supreme Court of the United States does not take issue with our conclusion. Here the case against *de facto* control is, if anything stronger. Not only is it shown that the agent was limited to the performance of certain shoreside functions not connected with the navigation of the vessel and in large part subject to supervision of the War Shipping Administration, but some of the duties per [fol. 45] formed by Moore-McCormack in the Hust case were not performed by Shepard in this case but by American President Lines, appointed berth agent, which performed "port-services", consisting principally of arranging for the handling and loading of cargo. Nor can we agree with the finding of the learned circuit judge, who heard the case below, that the evidence shows that Shepard had the power of discharging the seamen. The evidence on this point is to the effect that when agents discharged seamen they did so on behalf of the War Shipping Administration as principal, and there is no evidence that Shepard ever discharged any seaman.

The present case, therefore, is as stated in the beginning of this opinion, in all its essential aspects identical with the Hust case, with the single exception that Fink was injured after the Clarification Act was passed. The effect to be given to that act remains to be considered.

As previously stated, the Supreme Court of the United States, in the Hust decision, expressly left open the question whether the Clarification Act, in its application to claims arising after the act became effective, deprived seamen of the right to sue the General Agent under the Jones Act as their employer, and there is no binding declaration of that court on that subject. What this court said in the Hust case about the meaning and effect of section 1 of the Act did not

tion and sent the second question to the Circuit Court for decision. *Hust v. Moore-McCormack Lines, Inc.*, — Or. —, 177 P. (2d) 429. There is not a word in the Calderola opinion that even remotely suggests that the five-judge majority in that case thought that the decision in the Hust case turned on the "concession."

bear on the question now presented, since we were of the opinion that, irrespective of the Act and because of the terms of the General Service Agreement, the General Agent was not the seamen's employer, and, hence, the right in question had never existed.

[fol. 46] As shown by the Committee reports, excerpts from which are printed at the end of this opinion, the Administrator of the War Shipping Administration was desirous of maintaining the peace-time status of seamen so far as certain rights which they had long enjoyed were concerned, among others, their rights to compensation for death and injuries and to earn credits for Social Security benefits. The Administrator had not been able to carry out this policy in its entirety, because seamen employed on Government vessels were technically employees of the United States. As such, they did not have all the rights enjoyed by seamen privately employed. A seaman could not, for example, sue the United States for injury under the Suits in Admiralty Act, if the vessel on which he happened to be employed was a public vessel, and, moreover, it was difficult at times to determine whether it was a merchant or a public vessel.* "If they were private employees, right to redress for death, injury, or illness could be prosecuted under the Jones Act, and the General maritime law." S. R. No. 62, 78th Cong., 1st Sess., 5. As Government employees, they probably had rights under the United States Compensation Act not enjoyed by seamen under private employment, but "vital differences in these rights are made to depend upon whether the seaman happens to be employed aboard a vessel time-chartered to the War Shipping Administration or owned by or bareboat-chartered to the War Shipping Administration. Since seamen constantly change from one vessel to another, their rights for death, injury, or illness also constantly change, depending upon the relationship of the War Shipping Administration to the [fol. 47] vessel." *Idem*. The bill was designed to remove this confusion and these inequities. It did not affect "seamen employed on vessels time-chartered to the War

* Recovery for death on a public vessel has since been sustained under the Public Vessels Act of 1925, 46 U. S. C., sec. 781 *et seq.* *United States v. Lauro*, reported *sub nom.* *American Stevedores, Inc. v. Porello*, 330 U. S. 446, 458-460, 67 S. Ct. 847, 91 L. ed. — (March 10, 1947).

Shipping Administration where the vessels are supplied with crews employed by the company from which the vessel was chartered. As to them, their status and the status of the government employees mentioned will be made uniform." *Idem.*

The same uniformity of status between Government employed and privately employed seamen was proposed to be achieved with respect to the Civil Service Retirement Act and the Social Security Act.

To accomplish the purposes mentioned, section 1 of the Clarification Act was adopted. It reads as follows:

"Sec. 1. That (a) officers and members of crews (hereinafter referred to as 'seamen') employed on United States or foreign-flag vessels as employees of the United States through the War Shipping Administration shall, with respect to (1) laws administered by the Public Health Service and the Social Security Act, as amended by subsection (b) (2) and (3) of this section; (2) death, injuries, illness, maintenance and cure, loss of effects, detention, or reparation, or claims arising therefrom not covered by the foregoing clause (1); and (3) collection of wages and bonuses and making of allotments, have all of the rights, benefits, exemptions and privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on privately owned and operated American vessels.

"Such seamen, because of the temporary wartime character of their employment by the War Shipping Administration, shall not be considered as officers or employees of the United States for the purposes of the United States Employees Compensation Act, as amended; the Civil Service Retirement Act, as amended; the Act of Congress approved March 7, 1942 (Public Law 490, Seventy-seventh Congress); or the Act entitled 'An Act to provide benefits for the injury, disability, death, or detention, of employees of contractors with the United States and certain other persons or reimbursement therefor', approved December 2, 1942 (Public Law 784, Seventy-seventh Congress).

[fol. 48] "Claims arising under clause (1) hereof shall be enforced in the same manner as such claims would be enforced if the seamen were employed on a privately owned and operated American vessel.

"Any claim referred to in clause (2) or (3) hereof shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act, notwithstanding the vessel on which the seaman is employed is not a merchant vessel within the meaning of such Act.

"Any claim, right, or cause of action of or in respect of any such seaman accruing on or after October 1, 1941, and prior to the date of enactment of this section may be enforced, and upon the election of the seaman or his surviving dependent or beneficiary, or his legal representative to do so shall be governed, as if this section had been in effect when such claim, right, or cause of action accrued, such election to be made in accordance with rules and regulations prescribed by the Administrator, War Shipping Administration.

"Rights of any seaman under the Social Security Act, as amended by subsection (b) (2) and (3), and claims therefor shall be governed solely by the provisions of such Act, so amended.

"When used in this subsection the term 'administratively disallowed' means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration. When used in this subsection the terms 'War Shipping Administration' and 'Administrator, War Shipping Administration' shall be deemed to include the United States Maritime Commission with respect to the period beginning October 1, 1941, and ending February 11, 1942, and the term 'seaman' shall be deemed to include any seaman employed as an employee of the United States through the War Shipping Administration on vessels made available to or subchartered to other agencies or departments of the United States."

The section may be paraphrased as follows: As to certain rights, seamen employed by the United States on Government vessels shall not be deemed employees of the United States; as to certain other rights, including the right to recover for death and injuries, such seamen shall have [fol. 49] the same status as seamen privately employed. The remedy in the latter class of cases shall be by suit against the United States under the Suits in Admiralty Act, after the claim shall have been administratively disallowed.

The question is whether Congress intended that this should be the exclusive remedy. We think that it must be so held. This was a comprehensive enactment intended to define the rights and remedies of seamen employed on United States vessels for the period of the war. It speaks in no uncertain terms of the intention of Congress to treat such seamen as employees of the United States, while according them the same *rights* they would have had in private employment, though not the same *remedies*. Although General Agents are not mentioned, the context of the section, as well as the legislative history, excludes the notion that they were to be regarded as employers of such seamen and liable to suit as such for the causes mentioned. Had that been in the mind of Congress, there would have been no reason for the provision regarding claims for injury and death, since, as employees of the General Agent, the seamen, without any additional legislation whatever, would have had the right to sue the agent under the Jones Act, with the right to a jury trial. It would have been wholly unnecessary to accord to seamen in private employment the rights of seamen in private employment.

The act draws a clear distinction between substantive rights and the procedure for enforcing those rights. As to [fol. 50] this it is said in *Gaynor v. Agwilines, Inc.*, (U. S. D. C. E. D. Pa.) 1948 A. M. C. 81, supplemental opinion, January 1, 1948, not reported:

*** * * Merely because Congress stated that with respect to those rights listed in clauses (2) and (3) of section 1 (a) the seamen employed by the War Shipping Administration shall 'have all the rights, benefits, exemptions, privileges and liabilities, under law applicable to citizens of the United States employed as seamen on privately owned and operated American vessels', it does not follow that Congress meant that they shall have the same remedies. Congress was not haphazard, but careful in the use of terms. The omission of the word 'remedies' was not accidental but intentional."

This whole controversy is over the right to a jury trial in this class of cases. Yet the legislative history demonstrates conclusively that Congress, for reasons which to it seemed sufficient, determined to withhold that right from Govern-

ment-employed seamen for the duration of the war. The question arose at an early stage in the consideration of the Clarification Act, when a representative of the National [fol. 51] Maritime Union appeared before the House Committee on the Merchant Marine and Fisheries, and stated that "unfortunately" the bill provided that claims for death, injury, and so forth, should be enforced pursuant to the Suits in Admiralty Act, and requested that section 1 be amended by allowing the claimant at his election to "maintain an action for damages at law, with the right of a trial by jury." Hearings on H. R. No. 7424, 77th Cong., 2 Sess., 31. In the same report (p. 33) appears a letter of the Attorney General under date of September 14, 1942, in which he lists three reasons why Congress might deem it inadvisable to allow jury trials in such cases. These are: First, that "it has been found that in the course of admiralty litigation information is made available to the enemy detrimental to the national safety and detrimental to the lives and safety of seamen." To prevent this an amendment to Admiralty Rule 46, which would permit such trials to be held *in camera* and the records in the proceedings to be impounded, had been adopted. But it would be difficult to make such a provision effective in jury trials. Second Congress has rarely allowed jury trials in suits against the United States. Third, the cases will have to be tried largely on depositions, and judges are better qualified than juries to appraise evidence given in that form.

Congress, as the reports show, governed its action on this point by the advice of the Attorney General, and provided that the claims in question *shall* be prosecuted under the Suits in Admiralty Act. See H. R. No. 2572, 77th Cong., 2d Sess., 14; S. R. No. 1655, 77th Cong., 2d Sess., 24; H. R. No. 107, 78th Cong., 1st Sess., 21.

The decision not to allow a jury trial in this class of cases is thus referred to in the Committee reports:

[fol. 52] "Under clause 2 of section 1 (a) these substantive rights would be governed by existing law relating to privately employed seamen. The only modification thereof arises from the remedial provision that they shall be enforced in accordance with the provisions of the Suits in Admiralty Act." H. R. No. 2572, 77th Cong., 2d Sess., 14; S. R. No. 62, 78th Cong., 1st Sess., 11; S. R. No. 1655, 77th Cong., 2d Sess., 3; H. R. No. 107, 78th Cong., 1st Sess., 21.

The modification referred to is not an enlargement but a curtailment of rights. There could have been no such curtailment if seamen were to continue to enjoy the right to sue the General Agent at law under the Jones Act.

But, it is argued, Congress either did not know or was in doubt whether seamen on vessels of the United States were employees of the General Agent with the usual rights of such employees, and, not having specifically or expressly legislated against the continued exercise of such rights, the intention to do so cannot be implied, under the rule that there must be an unequivocal expression of an intention to disturb settled rights before the courts will declare that such rights have been taken away. *Hust v. Moor-McCormack Lines*, *supra* (328 U. S. 707, 722); *Brady v. Roosevelt S. S. Company*, *supra* (317 U. S., at p. 580).

We will not speculate on what Congress knew or thought in this regard. As stated, there is no mention of agents in section 1 of the Clarification Act. There is no mention in the Committee reports of the possible liability of agents as employers of seamen on United States vessels, employed by the United States through the War Shipping Administration. There are several references to "an independent liability (of agents) in certain cases," as determined in [fol. 53] the *Brady* case. S. R. No. 62, 78th Cong., 1st Sess., 8, 17; H. R. No. 107, 78th Cong., 1st Sess., 5, 29; but the *Brady* case did not deal with the question of the liability of an agent as an employer of seamen.*

There is also mention in the reports of the use by the War Shipping Administration of the services of private steamship companies in connection with the operation of the merchant fleet, and of certain of the provisions of the General Service Agreement under which the agents acted. S. R. No. 62, 78th Cong., 1st Sess., 4.

But whatever Congress may have thought as to the possibility of a holding that the seamen in question were em-

* In the opinion of Mr. Justice Rutledge in the *Hust* case (328 U. S. 729) a footnote says of the Committee References: "These reports construe the effects of the *Brady* decision more narrowly than we have done in this case and than the decision justifies." The committee's construction, however, would seem to be in harmony with the view of the effects of the *Brady* decision expressed by the majority in the *Caldarola* case.

ployees of the agents, as well as of the United States, the intention to declare definitively the rights and remedies of such seamen is manifest in the first section of the Clarification Act. The purpose of Congress is emphasized by the retroactive provision of section 1, which deals with claims or causes of action arising after October 1, 1941, and before the act became effective, and provides that such claims may be enforced "and at the election of the seaman . . . shall be governed, as if this section had been in effect," when such cause of action accrued. The Hust case holds that the election thus provided for was available to Hust, since his cause of action arose before the Act became effective. That is, he could either have sued the United States pursuant to the provisions of the Suits in Admiralty Act, or he could maintain his action against the agent under the [fol. 54] Jones Act. No such election is given as to after-accruing claims, and none, we think, can be implied.

This conclusion is in accord with that reached by Judge Ganey of the District Court of the United States for the Eastern District of Pennsylvania in Gaynor v. Agwilines, Inc., *supra*, and to some extent is supported by Shilman v. United States, (C. C. A. 2d) 1948 A. M. C. 19. The Gaynor case was a civil action against the General Agent for wages, maintenance, and cure, and for loss of personal effects. Like claims for death and personal injuries, such claims, under the Clarification Act, Sec. 1 (a), clauses (2) and (3) "shall . . . be enforced pursuant to the provisions of the Suits in Admiralty Act." The court held that the plaintiff's exclusive remedy was against the United States under that Act. The Hust case was distinguished, because it arose before the effective date of the Clarification Act. The Shilman case was a libel in admiralty against the United States and the General Agent, to recover wages. The court, in an opinion by Judge Augustus Hand, held that the seaman was entitled to recover from the United States, citing Sec. 1 (a), clause (3), of the Clarification Act, but not from the General Agent, because the claim "arose out of a contract of employment by the United States as a disclosed principal and therefore may not be asserted against its agent." Referring to the Hust and Caldarola cases, the court said: "In each case the court was highly divided but in neither did it decide that the agent was so far the employer as to be liable to the seamen for their wages or other contractual obligations."

Plaintiff has cited *Aird v. Weyerhaeuser Steamship Company*, (C. C. A. 3d) 1947 A. M. C. 1503, and *Cohen v. American Petroleum Transport Corp.*, (City Court of the City of New York) 1947 A. M. C. 336. In the former case, which was a *libel in personam*, *Aird*, a seaman, was permitted to recover wages against the agent. The case is distinguishable, because the claim arose before the Clarification Act. We are advised that a rehearing has been granted and that no final decision has yet been rendered. The Cohen decision sustained a seaman's right to recover from the agent for personal injuries under the Jones Act. Its value as authority is weakened by partial reliance on *Militano v. United States*, *supra* (156 F. (2d) 599), which, on the authority of the Hust case, held the General Agent owner of the vessel *pro hac vice*, but has since in effect been overruled by the *Caldarola* decision. For the reasons heretofore given, we are unable to agree with the New York court's view that the Clarification Act does not affect seamen's rights to sue the agents as their employers.

The case has been ably presented on both sides and in the brief of the Government, and counsel have made available to the court a mass of material which has received our consideration and has aided in the solution of the problem.

The Government, in its brief, takes the position that the Clarification Act "has no bearing on the present case". This would be true if, as the Government contends, the Hust case has been overruled or does not stand for agent liability in a case like this. Not being able to agree with these contentions, it has become necessary for us to interpret the Act. In the view we have taken of the meaning and effect of that legislation, it was error for the Circuit Court to rule adversely to the defendant upon the various motions by which it raised the question of its liability.

As this disposes of the case, there is no need to discuss other assignments of error in defendant's brief.

[fol. 56] The judgment is reversed and the cause remanded to the Circuit Court with directions to enter judgment — the defendant.

Belt, J., dissents.

"Problems arising out of Government employee status of seamen." — Various difficulties have arisen with respect to the benefits and remedies for seamen employed by, or on behalf of, the War Shipping Administration on vessels

owned or bare-boat chartered by it. These questions arise because of a technical status of such seamen as employees of the United States by virtue of their employment through the War Shipping Administration for service on such vessels.

"Because of this fact that Administrator has not been able under existing law to carry out entirely his intended policy of maintaining the peacetime status of seamen insofar as seamen's rights to compensation for injuries, and so forth, wage credits toward social-security benefits, and various other benefits which seamen have enjoyed and to which they are entitled. The purpose of section 1 of the bill is to correct the situation so as to permit the complete extension into this area of the basic policy of maintaining the private status of merchant seamen for the duration of the war.

"Seamen employed as Government employees on vessels owned by, or bareboat-chartered to, the War Shipping Administration are sometimes precluded from enforcing against the United States the rights and benefits in case of death, injury, illness, detention, and so on that would be available to them if employed by private employers, except under the Suits in Admiralty Act. If they were private employees, rights to redress for death, injury, or illness could be prosecuted under the Jones Act and the general maritime law. These same rights may be asserted against the United States as the employer under the Suits in Admiralty Act providing the vessel involved is a merchant vessel. In case of public vessels the seaman must rely for compensation upon the Administrator's policy recognizing contractual liability which this legislation recognizes. Present-day operating conditions often make uncertain in some cases whether the vessel is a merchant or a public vessel. As a consequence, even though the vessels are generally merchant vessels and not public vessels, there are some cases in which the aforementioned rights of such seamen are in doubt. In addition to these rights which, at times, are [fol. 57] uncertain for the reasons mentioned, the seamen who are employees of the United States probably have rights under the United States Employees' Compensation Act in the event of injury or death. Such compensation benefits are not presently enjoyed by seamen under private employment. Thus vital differences in these rights are

made to depend upon whether the seaman happens to be employed aboard a vessel time-chartered to the War Shipping Administration or owned by or bareboat-chartered to the War Shipping Administration. Since seamen constantly change from one vessel to another, their rights for death, injury, or illness also constantly change, depending upon the relationship of the War Shipping Administration to the vessel. This fluctuation and lack of uniformity of rights leads to dependency of vital rights upon chance with a result of confusion and inequities. The bill does not affect seamen employed on vessels time-chartered. As to them their status and the status of the Government employees mentioned will be made uniform.

"Furthermore, these seamen who are Government employees are theoretically subject to the Civil Service Retirement Act, yet they are actually exempt for the time being because of an Executive order excluding employees engaged in certain types of services. Employees of private companies earn credits toward benefits of the old-age and survivors' insurance provisions of the Social Security Act. Under the present laws seamen who are government employees through employment by the War Shipping Administration do not have rights under either the Civil Service Retirement Act nor is their employment covered by the Social Security Act." S. R. No. 62, 78th Cong., 1st Sess., 5. See H. R. No. 2572, 77th Cong., 2d Sess., 8; H. R. No. 107, 78th Cong., 1st Sess., 15; H. R. No. 1655, 2d Sess., 18; H. R. No. 7424, 77th Cong., 2d Sess., 14.

"The various rights and remedies under statute and general maritime law with respect to death, injury, illness, and other casualty to seamen, have been rather fully set forth hereinabove. Under clause 2 of section 1 (a) these substantive rights would be governed by existing law relating to privately employed seamen. The only modification thereof arises from the remedial provision that they shall be enforced in accordance with the provisions of the Suits in Admiralty Act. This procedure is appropriate in view of the fact that the suits will be against the Government of the United States. In such a suit no provision is made for a jury trial as may otherwise be had in a proceeding such as one under the Jones Act for reasons set forth in the letter of the Attorney General (September 14, 1942)." H. R. No. 2572, 77th Cong., 2d Sess., 14. See, H. R. No. 107,

78th Cong., 1st Sess., 21; S. R. No. 1655, 77th Cong., 2d Sess., 3.

[fol. 58] IN SUPREME COURT OF OREGON

FRED W. FINK, Respondent,

v.

SHEPARD STEAMSHIP COMPANY, a corporation, Appellant

Appeal from Multnomah County

JUDGMENT—April 6, 1948

This cause on March 4, 1948, having been duly argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for further consideration; and the court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is error as alleged.

It is therefore considered, ordered and adjudged that the judgment of the court below in this cause rendered and entered be and the same is in all things reversed and set aside.

It is further ordered that appellant recover of and from respondent its costs and disbursements in this court taxed at \$605.50.

It is further ordered that this cause be remanded to the court below from which the appeal was taken with directions to enter a judgment for defendant and in accordance herewith.

[fol. 59] [File endorsement omitted]

IN THE SUPREME COURT OF OREGON

[Title omitted]

PETITION FOR REHEARING—Filed May 14, 1948

To the Honorable Supreme Court of the State of Oregon and the Judges Thereof:

Comes now Fred W. Fink, Respondent in the above entitled cause, through his attorneys, Green, Landye & Peter-

son and Hicks, Davis & Tongue, and respectfully petitions for a rehearing of said cause for the reasons and upon the grounds following, to-wit:

I

In holding that under the Clarification Act, 50 U.S.C.A. App. sec. 1291, the exclusive remedy of injured seamen employed on vessels owned by the United States and operated under standard General Agency Agreements is to sue the United States under the Suits in Admiralty Act, it necessarily follows that all of the former rights of such seamen to sue the general agents in the state courts under the Jones Act, 46 U.S.C.A. sec. 688, with the right of trial by jury, have been destroyed by virtue of the Clarification Act. In so holding, this Court has failed to follow the rule established by the Supreme Court of the United States in *Brady v. Roosevelt Steamship Co.*, 317 U. S. 575 and in *Hust v. Moore-McCormack Lines, Inc.*, 328 U. S. 707, that although "Congress could authorize so vast a disturbance to settled rights by clear and unequivocal command . . . it is not permissible to find one by implication."

II

Before such a clear intent can be found to provide an exclusive remedy against the United States and to destroy such rights, it must at least be clear that Congress understood that at the time of enacting the Clarification Act [fol. 60] seamen employed on such vessels had theretofore become employees of the United States; since if Congress understood that such seamen were still employees of the general agents or was in doubt as to whether such seamen were employees of the United States or of the general agents, it would have been necessary to amend or repeal the Jones Act before the rights of such employees to sue the general agents would have been destroyed and in the absence of such amendment or repeal the provision of rights against the United States must be considered as an *additional* remedy, not an *exclusive* remedy; since rights under the Jones Act cannot be destroyed by implication.

III

The Supreme Court of the United States in the *Hust* case has expressly held that such seamen are employees of the

general agents for the purposes of the Jones Act, as confirmed in *Caldarola v. Eckart*, 332 U. S. 155; that Congress was at least uncertain as to the status of such seamen (op. p. 730); that one of the purposes of the Clarification Act was to save seamen's rights rather than to take them away (op. p. 726) and that the Act was passed only "to make certain that seamen would have *at least* the remedy provided by the Suits in Admiralty Act" (op. p. 727). These pronouncements are binding on this Court and foreclose any holding that in adopting that Act Congress expressed any "clear and unequivocal command" to destroy injured seamen's rights under the Jones Act to sue the general agents.

IV

Far from having any such far-reaching intent, the Clarification Act, as conceded by the very administrative agency which drafted the legislation and sponsored its passage, was limited to the rights of such seamen against the government, did nothing to affect any rights or remedies that they might have had against the general agents and, therefore, "has no bearing on the present case." (Gov. Br. p. 51)

V

The retroactive provisions of the Clarification Act [fol. 61] providing for an election of remedies prior to the effective date of that Act, instead of showing an intent to limit seamen to suits under the Jones Act after the effective date of the Clarification Act, reveals no more than an intent to extend retroactively the remedy of such seamen under the Suits in Admiralty Act, in accord with the "conserving intent of Congress", as held in the *Hust* case, and, at the least, cannot be regarded as any indication of a "clear and unequivocal command" to destroy the rights of seamen under the Jones Act against the general agents.

VI

The decision of this Court represents but another attempt to resurrect the doctrine of the *Lustgarden* case, *Johnson v. Fleet Corp.*, 317 U. S. 575, limiting the remedy of such seamen to Suits in Admiralty against the government—a doctrine first rejected in *Brady v. Roosevelt Steamship Co.*, *supra*, and again rejected in *Hust v. Moore-McCormack*.

Lines, supra, in reversing the decision of this court in that case.

VII

Since the submission of this case for decision respondent has been informed of additional decisions by other courts which add to the weight of authority in support of the proposition that, despite the Clarification Act, such seamen retain the right to sue the general agents; as held by the learned trial judge in this case. These decisions, copies of which are attached hereto marked as Exhibits A and B, include a decision by Hon. Alfred C. Coxe, a United States District Judge for the Southern District of New York, in *Casey v. American Export Lines*, and a decision by Hon. Harold R. Medina, a United States District Judge of national recognition for the same district, in *Warren v. United States of America and American South African Lines, Inc.*, 1948 A.M.C. 568.

Wherefore, upon the foregoing grounds, it is respectfully submitted that this petition for rehearing be granted and [fol. 62] that the judgment of the Circuit Court of the State of Oregon for Multnomah County be, upon further consideration, affirmed.

Respectfully submitted, Green, Landye & Peterson,
Hicks, Davis & Tongue.

[fol. 63] EXHIBIT "A" TO PETITION FOR REHEARING

"I think this case is ruled by the *Hust* case, 328 U. S. 707 despite the fact that the injury which resulted in the death of the deceased occurred subsequent to the effective date of the Clarification Act on March 24, 1943. See *Cohen v. American Petroleum Corp.* 1947 A.M.C. 336.

The motion of the defendant to dismiss the action for lack of jurisdiction is denied."

: Alfred C. Coxe, U.S.D.J.

Dec. 17, 1947.

[fol. 64] EXHIBIT "B" TO PETITION FOR REHEARING

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
NEW YORKWALTER K. WARREN, Libellant,
againstUNITED STATES OF AMERICA as Owner of the Steamship
"Anna Howard Shaw," and American South African
Line, Inc., as Operator of the Steamship "Anna Howard
Shaw", Respondents

OPINION

MEDINA, D.J.:

In *Shilman vs. United States of America and Grace Line, Inc.*, decided December 4, 1947, the C.C.A. did not decide that a seaman may not recover maintenance and cure against a steamship company acting under a General Agency Agreement. The contention that the C.C.A. would so hold, should such a case come before it, is based upon the statement at the end of the opinion that neither in the Hust case nor the Calderola case was it held that the agent was an employer to such an extent as to give rise to liability for wages "or other contractual obligations." The subject is a prickly one. The right to maintenance and cure traces its origin to a time when such things as "contractual obligations" in the modern sense of the term could scarcely be said to exist. The right is inherent in the status of the seaman. It is by no means clear that a right to maintenance and cure may not arise even prior to the signing of shipping articles, comment, *The Tangled Seine. A Survey of Maritime Personal Injuries Remedies*, 57 Yale Law Journal, 243, 248, 249 (1947) citing *Martinez vs. Marine Transport* [fol. 65] 1947 A.M.C. 529 (N.Y.C. Mun. Ct.) rev'd on other grounds 119 N.Y.L.J. 787 Sup. Ct. App. Term 3/2/48; and a scrutiny of the long interesting history of this curious remedy of the maritime law would seem to lead to the conclusion that it partakes as much of the character of tort as contract and perhaps hangs suspended as it were between the two. In any event, my holding that American South African Line is the libellant's employer for the purposes of a claim for maintenance and cure stems from the Hust case. With each new reading of the opinion

of the Courts I am the more convinced that the reasoning behind that decision applies just as forcibly to maintenance and cure as to the remedy provided by the Jones Act. While the Hust case stands it seems to me I have no alternative than to stick to my guns.

Respondent, American South African Lines, now urges for the first time that the Clarification Act is a bar to libellant's recovery. But the weight of authority and the weight of reasoning to the Clarification Act will not bear the construction which respondents would give it with respect to rights arising after the date it took effect. Bennett vs. Wilmore 69 F. Supp. 427, Moss vs. Alaska 1945 A.M.C. 493, Gay vs. Pope & Talbot 47 N.Y.S. (2) 16, Cohen vs. American Petroleum 1947 A.M.C. 336, Fink vs. Shepard 1946 A.M.C. 1333.

Contra:

Gaynor vs. Agwilines 1948 A.M.C. 81, U.S. vs. Tubinski 153 F 2nd 1013.

Motion denied 3/4/48.

[fol. 66] IN THE SUPREME COURT OF OREGON

FRED W. FINK, Respondent,

v.

SHEPARD STEAMSHIP COMPANY, a Corporation, Appellant

Appeal from Circuit Court, Multnomah County

Walter L. Tooze, Judge

Submitted on petition for rehearing filed May 14, 1948

Original opinion filed February 6, 1948

Green, Landye & Peterson and Hicks, Davis & Tongue for Petitioner.

Wood, Matthiessen & Wood, contra.

Before Rossman, Chief Justice, and Lusk, Belt, Kelly, Bailey and Brand, Justices.

LUSK, J.

Petition denied.

OPINION

[fol. 67] LUSK, J.

Plaintiff's petition for rehearing is based upon reasons heretofore advanced and all of which were considered in our opinion. Nothing new is presented except that attention is called to two decisions not previously cited: *Casey v. American Export Lines* (December 17, 1947, not reported), by Judge Alfred C. Coxe of the United States District Court for the Southern District of New York, and *Warren v. United States* (March 4, 1948) by Judge Harold R. Medina, of the same court, reported in 1948 A. M. C. 568. These eminent federal judges, passing upon the same question that was before us, have reached the opposite conclusion. They have not, however, seen fit to state the reasons which influenced them. Judge Coxe filed a memorandum consisting of one sentence. Judge Medina's answer to the claim that the Clarification Act barred a recovery against the agent for maintenance and cure is: "But by the weight of authority and the weight of reason to the Clarification Act will not bear the construction which respondent would give it with respect to rights arising after the date it took effect" (citing cases).

While we regret to find ourselves in disagreement with these decisions, we are not persuaded that the prestige of the judges who rendered them should, without more, cause us to abandon our previously announced views.

The petition for rehearing is, therefore, denied.

[fol. 68] IN SUPREME COURT OF OREGON

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—May 18, 1948

The court having duly considered the Petition for Rehearing filed on behalf of respondent, and now being fully advised in the matter, it is hereby ordered that the same be denied.

[fol. 69] IN SUPREME COURT OF OREGON

FIRST ASSIGNMENT OF ERROR

The Court erred in ruling that plaintiff was entitled to maintain an action against the defendant under the Jones Act in the Circuit Court; and in denying defendant's motion for a nonsuit; and in denying defendant's motion for a directed verdict; and in denying defendant's requested instruction for a directed verdict; and in denying defendant's motion for judgment notwithstanding the verdict.

These errors all rest upon the same ground, to-wit: That under Public Law 17, 78th Congress, 57 Stat. 45 Plaintiff was not entitled to sue defendant as his employer under the Jones Act in the State Court, but was confined to suit against the United States pursuant to the Suits in Admiralty Act.

[fol. 70] [File endorsement omitted]

IN THE SUPREME COURT OF OREGON

[Title omitted]

ORDER STAYING EXECUTION AND ENFORCEMENT OF JUDGMENT
AND MANDATE—Filed July 16, 1948

Upon application of Fred W. Fink, plaintiff-respondent in the above entitled cause, by Thomas H. Tongue, III, one of his attorneys, for an order staying execution and enforcement of the judgment of the above entitled Court and cause to enable said petitioner to apply for and obtain a writ of certiorari from the Supreme Court of the United States, and good cause therefor being shown; and petitioner having filed a good and sufficient undertaking, conditioned as required by law;

Now, Therefore, said undertaking in the amount of _____ is approved and it is ordered that the execution and enforcement of said judgment be and it is hereby stayed until the Supreme Court of the United States passes upon the petition to be made thereto in behalf of the plaintiff-respondent herein for a writ of certiorari and, if said petition be granted, until final disposition of said cause by the Supreme Court of the United States; provided that application for said writ is made to the Supreme Court of the

United States within three months from the 20th day of May, 1948, or within such additional time as may be granted by the Supreme Court of the United States for the filing of a petition for writ of certiorari therein.

Dated this 16" day of July, 1948.

(S.) George Rossman, Chief Justice.

[fol. 71a]

DEFENDANT'S EXHIBIT "E"

APPENDIX

The Correspondence Between the War Shipping Administration and the National Labor Relations Board

War Shipping Administration,
Washington 25, D. C., October 20, 1942.

National Labor Relations Board,
Washington, D. C.

GENTLEMEN:

As you know, one or two cases recently have arisen in which maritime labor unions have sought to invoke the jurisdiction of your Board under the National Labor Relations Act in matters involving either in whole or in part personnel employed on vessels owned by or under bareboat charter to the War Shipping Administration. Similar matters may arise in the future.

As you are undoubtedly aware, the War Shipping Administration, on April 8, 1942, requisitioned substantially all of the vessels in the American Merchant Marine with certain minor exceptions. These vessels are in addition to the substantial number of vessels constructed and owned by the government. The vessels requisitioned fall into two classes: (1) those requisitioned under bareboat charters which place the War Shipping Administration in substantially the same status as with respect to other vessels owned outright by the government, and (2) those requisitioned under time charters. All vessels owned or requisitioned under bareboat or time charter basis by the War Shipping Administration have been assigned to various steamship companies for operation under agency agreements. Those vessels owned by or bareboat chartered to the War Shipping

Administration are operated by steamship companies under what is known as a General Agency Agreement. Those vessels which are under time charter are operated by various steamship companies under what is known as a Time Charter Agency Agreement. While the charter and agency agreements of the nature mentioned are not uniform in all [fol. 71b] details, they are substantially the same with respect to the provisions governing the subjects discussed in this letter.

For your more complete information there is attached a copy each of our Requisition Bareboat Charter for Cargo and Tank Vessels, Requisition Time Charter for Dry Cargo Vessels, Requisition Time Charter for Tank Vessels, General Agency Agreement (applicable to the operation of vessels owned by or bareboat chartered to the War Shipping Administration), and our Time Charter Agency Agreement (applicable to the operation of vessels under time charter to the War Shipping Administration).

It will be noted that under Clause 1 of Part II of both forms of time charters mentioned above, the owner is required to deliver the vessel to the charterer with a "Master and a full complement of officers and crew." Under Clause 6 it is provided that the owner shall provide and pay for "wages of * * * and other expenses pertaining to, the Master, officers and crew (except as herein otherwise provided)." It should also be noted that by virtue of Article 3A (c) of the Time Charter Agency Agreement the agent is required to provide and pay for various expenses "except those pertaining to the Master, officers and crew." Under the arrangement provided for by these time charter and time charter agency agreements, as illustrated by the aforementioned provisions, the Master officers and crew members of vessels time chartered to the War Shipping Administration are employees of the owner and not the charterer.

A different situation exists in regard to personnel employed aboard vessels owned by or bareboat chartered to the War Shipping Administration. In this connection we wish to call your attention to the provisions in Clause 14 of Part II of the Bareboat Charter for Cargo and Tank Vessels mentioned above which reads as follows:

During the period hereof, the Charterer shall at its own expense, or by its own procurement, man, victual,

navigate, operate, supply, fuel and repair the Vessel and pay all charges and expenses of every kind and nature whatsoever incident thereto. The Charterer and not the Owner shall have exclusive possession, control [fol 71e] and command of said Vessel during the entire period of this Charter.

It should also be noted that under Article I of the General Agency Agreement, under which vessels owned by or bareboat chartered to the War Shipping Administration are operated, the general agent acts as the agent of the United States and not as an independent contractor in the management and conducting of the business of the vessels assigned to it by the United States. The following provisions contained in Article III-A (d) are also called specifically to your attention:

• • • The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. • • • The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder.

Under Article 7 provision is made for the reimbursement of the general agent by the United States for all crew expenditures, including disbursements for or on account of wages, extra compensation, overtime, bonuses, penalties, subsistence, repatriation, travel expense, loss of personal effects, maintenance, cure, vacation allowances, damages or compensation for death or personal injury or illness, insurance premiums, payments under any applicable pension fund, Social Security Taxes, etc.

The War Shipping Administrator has been advised that under the contractual arrangements mentioned above and for other reasons, the Master, officers, and members of the crew of all vessels owned by or bareboat chartered to the War Shipping Administration are employees of the United States and particularly of the War Shipping Administration, and are so considered and treated at the present time

by other governmental departments and agencies for the purposes of the Civil Service Retirement Act, the United [fol. 71d] States Employees' Compensation Act, the Federal Social Security Laws, and the Federal Employment Tax laws. Furthermore, the wages of such personnel are exempt from attachment as government employees. The War Shipping Administrator has also been advised that Section 2 of the National Labor Relations Act provide that the term "employer" shall not include the United States.

Under these circumstances, the War Shipping Administration cannot take a position that the National Labor Relations Board has jurisdiction under the National Labor Relations Act of the personnel aboard vessels owned by or bareboat chartered to the War Shipping Administration, and it is assumed that your Board, for like reasons, will not assert jurisdiction over these employees.

We are fully cognizant, however, of the services that your Board can render out of the abundance of your experience and trained staff in the solution of personnel problems which, except for the circumstances mentioned above, would ordinarily fall within the scope of the National Labor Relations Act. We are also generally advised of the satisfactory working arrangements which have been agreed upon between your Board and the War and Navy Departments under circumstances which, to some extent, may be analogous to those above described.

Enclosed for your further information is a copy of the Executive Order of the President dated February 7, 1942, establishing the War Shipping Administration. Paragraph 5 of the Executive Order reads as follows:

For the purpose of carrying out the provisions of this Order, the administrator is authorized to utilize the services of available and appropriate personnel of the United States Maritime Commission, the War and Navy Departments, the Bureau of Marine Inspection and Navigation of the Department of Commerce, and other government departments and agencies which are engaged in activities related to the operation of shipping

Paragraph 8 of the same Order reads in part as follows:

* * * The Administrator may exercise the powers, [fol. 71e] authority and discretion conferred upon him

by this Order through such officials or agencies and in such a manner as he may determine.

The War Shipping Administration is desirous of adopting the most feasible and practicable method of dealing with problems which may arise and relate to the personnel of vessels owned by or bareboat chartered to it. As an illustration of what has already been done in this respect, copies of Statements of Policy entered into between the War Shipping Administration and the various maritime unions are also enclosed.

By virtue of the authority granted under the provisions of the Executive Order quoted above, the Administrator may utilize in behalf of the War Shipping Administration the advice, services and assistance which may be furnished by other appropriate governmental departments and agencies to the end that the operations of vessels by the War Shipping Administration may be conducted at maximum efficiency and without interference and interruptions which might otherwise occur. For these reasons the value of the advice and assistance of the National Labor Relations Board is recognized in matters relating to the designation of collective-bargaining representatives, and to such other problems falling within the scope of the National Labor Relations Act as the War Shipping Administration may determine such advice and assistance is required. Of course, if your Board sees fit to furnish this advice and assistance to the War Shipping Administration, it should be understood that in the state of its advice the War Shipping Administration is compelled not to recognize that the National Labor Relations Board has jurisdiction over employees of the War Shipping Administration and that this question shall be reserved for future determination and adjudication in the event it should ever become pertinent and material in any proceeding or case.

As a means of obtaining a satisfactory arrangement for the adjustment of problems arising during the war emergency, I suggest the following arrangement be entered into:

1. The National Labor Relations Board in its customary manner, will conduct elections and otherwise act in the designation of collective bargaining representatives and in the adjustment of other problems which may involve personnel of vessels owned by or under bareboat charter to the War Shipping Administration.

2. The War Shipping Administration will be given notice of all proceedings which are instituted with the Board affecting our personnel or operating agents. Whenever a petition for certification of representatives under Section 9 (c) of the National Labor Relations Act is instituted, and whenever a charge alleging the commission of an unfair labor practice under that Act is filed, the Regional Director of your Board, in addition to notifying our operating agent immediately concerned, will also send a copy of such notification to the War Shipping Administration, Washington, D. C. The War Shipping Administration will likewise instruct all of its operating agents to give us a similar notice whenever a petition or charge of this nature has been filed. The Regional Directors of your Board will likewise transmit to us copies of complaints and petitions in proceedings commenced under the National Labor Relations Act which involved any of our operating agents.

3. The War Shipping Administration will be placed in a position to contribute facts, some of which may be of a confidential or secret nature, which are relative to the Board's consideration of a case or proceeding under the suggested arrangement.

4. A close liaison shall be maintained between the National Labor Relations Board and the War Shipping Administration in connection with activities of your Board and the War Shipping Administration under this arrangement including conferences relating to the problem of a formula whereby determinations of collective bargaining agents will not be made until a truly representative number of vessels are assigned to our respective operating agents and a correspondingly representative number of personnel are engaged aboard such vessels and whereby the status of collective bargaining agents, once determined, shall not be subject to too frequent challenge or change so as to interfere with the proper and efficient operation of vessels in the furtherance of the war effort.

[fol. 71g] 5. The War Shipping Administration under this arrangement shall be considered as having reserved its rights with respect to the jurisdiction of the Board over personnel aboard vessels owned by or bareboat chartered to the War Shipping Administration.

Sincerely yours, (Sgd.) E. S. Land, Administrator.

National Labor Relations Board,
Washington, D. C., October 26, 1942.

ADMIRAL E. S. LAND, Administrator,
War Shipping Administration, Washington, D. C.

DEAR SIR:

The Board has considered your letter of October 20, 1942, and is most anxious to cooperate with the War Shipping Administration in a wholehearted mutual endeavor to adjust problems within the jurisdiction of the Board incident to personnel in the Merchant Marine. To that end the Board would welcome an understanding with the War Shipping Administration whereby on the one hand the Board would administer and apply the National Labor Relations Act to seamen aboard merchant vessels irrespective of the types of charter or agreement under which such vessels operate and, on the other hand, with the understanding that the War Shipping Administration wishes to reserve the legal question whether the Board has jurisdiction with respect to personnel aboard vessels owned by or bareboat chartered to the War Shipping Administration.

The Board is advised by its counsel that no final determination is possible at the present time concerning the jurisdiction of the Board with respect to such personnel. It would appear that so vital a question could not ultimately and decisively be determined in the absence of a full hearing in which the employees, the operators and the War Shipping Administration could present evidence upon which the Board and the courts could make such a determination.

[fol. 71b] Nevertheless, the Board is deeply aware of the need for prompt and effective disposition of problems arising in the field of labor relations during the war emergency. Hence, the Board feels that to the extent that litigation can be avoided, the objectives of all would be best served.

As a means of obtaining a satisfactory arrangement for the adjustment of problems arising during the war emergency, the National Labor Relations Board will enter into the following arrangement with the War Shipping Administration:

1. The Board, in its customary manner, will conduct elections and otherwise act in the designation of collective

bargaining representatives and in the adjustment of other problems which may involve personnel of vessels owned by or under bareboat charter to the War Shipping Administration.

2. The War Shipping Administration will be given notice of all proceedings which are instituted with the Board affecting the personnel of vessels owned by or under bareboat charter to the War Shipping Administration. Whenever a petition for certification of representatives under Section 9 (c) of the National Labor Relations Act is instituted, and whenever a charge alleging the commission of an unfair labor practice under that Act is filed, the Regional Directors of the Board, in addition to notifying the operating agent immediately concerned, will also send a copy of such notification to the War Shipping Administration, Washington, D. C. The War Shipping Administration will likewise instruct all of its operating agents to notify it whenever a petition or charge of this nature has been filed. The Regional Directors of the Board will likewise transmit to the War Shipping Administration copies of complaints and petitions in proceedings commenced under the National Labor Relations Act which involved any of the operating agents.

3. The War Shipping Administration will be in a position to contribute facts, some of which may be of a confidential or secret nature, which are relative to the Board's consideration of a case or proceeding under the suggested arrangement.

4. A close liaison shall be maintained between the National Labor Relations Board and the War Shipping Administration in connection with activities of the Board and [fol. 71i] the War Shipping Administration under this arrangement, including conferences relating to the problem of a formula whereby determinations of collective bargaining agents will not be made until a truly representative number of vessels are assigned to your respective operating agents and a correspondingly representative number of personnel are engaged aboard such vessels, and whereby the status of collective bargaining agents, once determined, shall not be subject to too frequent challenge or change so as to interfere with the proper and efficient operation of vessels in the furtherance of the war effort.

In the conclusion, the National Labor Relations Board understands that the War Shipping Administration under this arrangement shall be considered as having reserved its rights with respect to the jurisdiction of the Board over personnel aboard vessels owned by or bareboat chartered to the War Shipping Administration.

Sincerely yours, (Sgd.) H. A. Millis.

War Shipping Administration,
Washington 25, D. C., March 30, 1943.

National Labor Relations Board,
Washington, D. C.

GENTLEMEN:

Reference is made to the exchange of correspondence between the National Labor Relations Board and the War Shipping Administration, copies of which are attached.

The War Shipping Administration is advised that some questions have arisen in relation to elections being conducted by your Board on vessels operated by General Agents of the War Shipping Administration. In some instances, the General Agent may operate vessels only under time charter; in other instances, the General Agent may operate vessels only under bareboat charter or general agency agreement; and in still other cases, the General Agent may engage in both types of operations, that is, he may operate vessels both under time charter and also under bareboat charter and general agency agreement. In this last mentioned type of [fol. 71j] operation, employees who had been originally employed by the General Agent prior to the requisition may find themselves employed on bareboat chartered or government-owned vessels; and new employees may find themselves indiscriminately employed on vessels operated under both types of charter or general agency agreement.

The controlling purpose of the exchange of correspondence between the National Labor Relations Board and the War Shipping Administration was to utilize, in the successful operation of the American Merchant Marine by the War Shipping Administration, the experience and trained personnel of the National Labor Relations Board in the field of its customary jurisdiction. What is the unit ap-

propriate for the purposes of collective bargaining in such a matter? The War Shipping Administration therefore expresses no views as to what the appropriate unit is or how these elections shall be conducted beyond stating that the War Shipping Administration has no objection if the National Labor Relations Board should conclude to treat all of the personnel under the immediate direction of a general agent as an appropriate unit, irrespective of the form of charter arrangement, and irrespective of conclusions whether a given employee is employed by the War Shipping Administration or the operator.

Sincerely yours, (Sgd.) E. S. Land, Administrator.

National Labor Relations Board,
Washington, D. C., September 14, 1943.

ADMIRAL E. S. LAND, Administrator,
War Shipping Administration, Washington, D. C.

Re: American-Hawaiian Steamship Company,
Case No. R-3688.

DEAR SIR:

Reference is made to your letter of October 20, 1942, and the reply of the National Labor Relations Board dated October 26, 1942, relating to the exercise by the National Labor Relations Board of jurisdiction over personnel aboard [fol. 71k] vessels owned by or bareboat chartered to the War Shipping Administration.

The proceeding referred to above is pending before the Board on a petition for investigation and certification of representatives for employees of American-Hawaiian Steamship Company. The case squarely presents the legal question whether the National Labor Relations Board has jurisdiction with respect to personnel aboard vessels owned by or bareboat chartered to the War Shipping Administration and which the aforesaid Company has been assigned for operation and servicing pursuant to the general agency agreement with the War Shipping Administration. The Company has taken the position that personnel aboard such vessels are employees of the United States, and that in consequence the National Labor Relations Board has no juris-

dition under the National Labor Relations Act. For the formal record in this proceeding, the National Labor Relations Board requests that the War Shipping Administration state whether or not the personnel involved in the instant case are regarded by the War Shipping Administration as employees of the United States.

Sincerely yours, (Sgd.) H. A. Millis.

War Shipping Administration;
Washington 25, D. C., November 9, 1943.

National Labor Relations Board,
Washington, D. C.

GENTLEMEN:

This acknowledges your letter of September 14, 1943, concerning the American-Hawaiian Steamship Company, your Case No. R-3688, in which the National Labor Relations Board requests that the War Shipping Administration state whether or not the personnel involved are regarded by the War Shipping Administration as employees of the United States.

The desirability of reserving this question, without interruption or interference with the processes of the National Labor Relations Board, was the basis of our exchanges of correspondence, copies of which are attached.

[fol. 711] At the outset, I should like to make it clear that the War Shipping Administration considers this arrangement to be most helpful, and hopes that it may be continued. Moreover, from the standpoint of the War Shipping Administration, action by the National Labor Relations Board, in accordance with its usual procedures, for the settlement of whatever difference may exist between American-Hawaiian Steamship Company and the personnel employed on board vessels owned by or bareboat chartered to the Administration and operated by the Company as agent for the Administration, would be in conformity with the arrangement referred to. Also such action by the Board would appear to be in conformity with its decisions in the cases of the Cosmopolitan Shipping Company, Inc., 2 N. L. R. B. 759, America France Line et al., 3 N. L. R. B. 64, and Southgate Nelson Corporation, 3 N. L. R. B. 535.

Your letter of September 14, 1943, however, asks for a statement as to whether the personnel involved in this proceeding are regarded by the War Shipping Administration as employees of the United States. In this connection, we are in agreement with the statement in your letter of October 26, 1942, as follows:

It would appear that so vital a question could not ultimately and decisively be determined in the absence of a full hearing in which the employees, the operators and the War Shipping Administration could present evidence upon which the Board and the courts could make such a determination.

Therefore, instead of attempting to state legal conclusions, we submit such facts as are known by the War Shipping Administration to have a bearing on the problem in addition to those outlined in our prior exchanges of correspondence.

The Executive Order creating the War Shipping Administration contemplates the operation of the American Merchant Marine as a civilian enterprise. In the exercise of its various functions and in the conduct of its activities, the War Shipping Administration in general is authorized to operate with the powers of a business or a commercial organization under the provisions of the Merchant Marine Act of 1936. These activities are so broad and the need for emergency action has been so great that the Administrator [fol. 71m] cannot function with the usual restrictions applicable to government agencies.

At the time of our letter of October 20, 1942, and as stated therein, we were advised that the personnel in question were employees of the United States and were then so considered and treated by other governmental departments and agencies for the purposes of the Civil Service Retirement Act, the United States Employees Compensation Act, the Federal Social Security Laws, and the Federal Employment Tax Laws.

Shortly after that time, the problem of the status of merchant seamen employed on vessels owned by or bareboat chartered to the War Shipping Administration was submitted to the Congress in connection with H. R. 133, 78th Congress. This bill as enacted (Public Law 17, 78th Congress, approved March 24, 1943) put all merchant seamen

on the same basis as seamen in private employment with respect to: (1) the right to wages, maintenance, and cure, in case of illness or injury in the ship's service; (2) the right to the benefits of the Public Health Service, including Marine Hospitals; (3) old-age and survivors' insurance under the Social Security Act; (4) the right to indemnity through court action for injury resulting from unseaworthiness of the vessel or defects in vessel appliances; (5) the right to action under the Jones Act for injury or death resulting from negligence of the employer; (6) the right to enforce claims for these benefits according to the procedure of the Suits in Admiralty Act, except that claims with respect to Social Security benefits shall be prosecuted in accordance with the procedure provided in the Social Security Law; (7) the protection of war-risk insurance at the employer's expense, in accordance with the decisions of the Maritime War Emergency Board, as required for all privately employed seamen. Similarly, they are entitled to war-bonus payments under decisions of this Board.

Moreover, Public Law 17 excludes merchant seamen from the operation of the following statutes which ordinarily cover government employees: (1) Civil Service Retirement Act, because as private employees they are covered by the Social Security Act; (2) United States Employees Compensation Act, because as private employees they are covered [fol. 71n] by the Jones Act, and have the protection of war-risk insurance under decisions of the Maritime War Emergency Board; (3) Public Law 490, because the pay and allowances provided in that Act for missing and interned employees of the United States are furnished under the requirements of the Maritime War Emergency Board; and (4) Public Law 784, providing war-casualty compensation and detention payments for contract employees serving outside the United States.

In reporting H. R. 133 to the House of Representatives, the Committee on Merchant Marine and Fisheries said:

The basic scope and philosophy of the measure is to preserve private rights of seamen while utilizing the merchant marine to the utmost for public wartime benefit.

At the time the War Shipping Administration requisitioned the American Merchant Marine, the great majority

of trained and qualified seagoing personnel were members of the various established maritime labor organizations, and most operators were parties to collective-bargaining agreements with them. In May 1942, the War Shipping Administrator signed documents known as the Statements of Policy with all of the principal maritime labor organizations. Under the Statements of Policy the War Shipping Administration agreed that, as steamship operators were appointed as agents of the War Shipping Administration, their customary and usual practices of securing and dealing with seagoing personnel would not be disturbed. It was the purpose and understanding of the Statements of Policy that collective bargaining and collective-bargaining procedures and practices, which were established in the industry and which remained established on time-chartered vessels after requisition, should be extended and maintained on vessels bareboat chartered to or owned by the War Shipping Administration. The foregoing development is summarized in the report of the Committee on Merchant Marine and Fisheries to the House of Representatives with respect to H. R. 133, as follows:

Shortly after the appointment of the Administrator, he adopted a statement of labor policy in which he [fol. 710] specifically provided that "the provisions of the existing collective-bargaining agreements be continued and observed unless changed by mutual agreement." Accordingly, the seamen employed by the War Shipping Administration through its general agents are entitled to all of the contractual rights of seamen on commercial vessels, including overtime compensation, right to settle disputes through arbitration, special bonuses and penalty provisions, and so forth. By this means, there has been preserved existing labor structures which have been built up in a process of experimentation and evolution, and there has been maintained and utilized for the war effort the experience of responsible organizations and leadership. Although employees of the Government, these seamen are paid by the general agents directly in the same manner as payment is made in commercial operations, the funds for such payments having been lodged in bank accounts maintained by the general agents out of revenues received from the operation or from advances made by the Administrator.

The Committee likewise considered the possibility of amendment of the National Labor Relations Act and in the same report stated:

Suggestions have been made that the National Labor Relations Act be made applicable to seamen, notwithstanding the fact that seamen employed by the Government would not be entitled to benefits under that Act. The Committee understands that it is the intention of the Administrator of the War Shipping Administration to avail himself of the facilities of the National Labor Relations Board for the purpose of aiding in the maintenance of collective-bargaining processes and adjusting problems in such connection when consistent with the prime objective of a vigorous and successful prosecution of the war. Under the Executive Order creating the War Shipping Administration, the Administrator has full authority to avail himself of such services, and in view of the expressed attitude in this connection, it seems unnecessary to consider further suggestions for making the National Labor Relations Act specifically applicable to seamen by Statute:

The Administrator's proposed solution to this problem would appear to assure seamen the substantial benefits of the National Labor Relations Act without infringing upon the well-established principles that the United States as an employer is not subject to the National Labor Relations Act. The Administrator could avoid subjecting disputes or other problems to the National Labor Relations Board in cases where this might interfere with the effective prosecution of his duties and functions. Accordingly, this solution of the problem seems to make legislative action unnecessary.

In view of the foregoing considerations, there appears to be no reason, from the War Shipping Administration standpoint, why the Case at hand should not be disposed of in accordance with the arrangement established by our exchanges of correspondence, and it is not the desire of the War Shipping Administration that there be any departure from that arrangement.

Sincerely yours, (Sgt.) E. S. Land, Administrator.

GAA 4-4-42. Contract WSA-215

Service Agreement for Vessels of Which the War Shipping Administration Is Owners or Owner Pro Hac Vice

This Agreement, made as of October 19, 1941, between the United States of America, (herein called the "United States") acting by and through the Administrator, War Shipping Administration, and Moore-McCormack Lines, Inc., a corporation organized and existing under the laws of Delaware, and having its principal place of business at New York, N. Y., (herein called the "General Agent").

Witnesseth: That in consideration of the reciprocal undertakings and promises of the parties herein expressed:

Article 1. The United States appoints the General Agent as its agent and not as an independent contractor, to manage and conduct the business of vessels assigned to it by the United States from time to time.

Article 2. The General Agent accepts the appointment and undertakes and promises so to manage and conduct the business for the United States, in accordance with such directions, orders, or regulations as the latter has prescribed, or from time to time may prescribe, and upon the terms and conditions herein provided, of such vessels, as have been or may be by the United States assigned to and accepted by the General Agent for that purpose.

Article 3A. To the best of its ability, the General Agent shall for the account of the United States:

(a) Maintain the vessels in such trade or service as the United States may direct, subject to its orders as to voyages, cargoes, priorities of cargoes, charters, rates of freight and charges, and as to all matters connected with the use of the vessels; or in the absence of such orders, the General Agent shall follow reasonable commercial practices;

(b) Collect all moneys due the United States under this Agreement and deposit, remit, or disburse the same in accordance with such regulations as the United States may prescribe from time to time, and account to the United States for all moneys collected or disbursed by it or its agents;

(c) Equip, victual, supply and maintain the vessels, subject to such directions, orders, regulations and methods of supervision and inspection as the United States may from time to time prescribe;

(d) The General Agent shall procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid [fol. 72b] in the customary manner with funds provided by the United States hereunder.

(e) Issue or cause to be issued to shippers customary freight contracts and Bills of Lading. Unless the United States shall otherwise instruct, such Bills of Lading shall contain all exemptions and stipulations usual to the particular trade or service in which the vessels may be engaged, and reserve a lien upon all cargoes for the payment of freight, primage charges, dead freight, demurrage, forwarding charges, advance charges for carriage to port of shipment, for contributions in general average and special charges on cargo and for all fines or penalties which the vessels or cargoes may incur by reason of illegal, incorrect or insufficient marking or addressing of packages or description of their contents. After a uniform Bill of Lading shall have been adopted by the United States, such Bill of Lading shall be used in all cases as soon as practicable after receipt thereof by the General Agent with such modifications as shall be necessary for the particular trades in which the vessels hereunder shall from time to time be employed. Pending the issuance of such

uniform Bill of Lading, the General Agent may continue to use its usual commercial form of Bill of Lading.

As soon as practicable after April 1, 1942, all Bills of Lading shall be issued by the General Agent or its agents as agent for the Master and the signature clause may provide substantially that the General Agent makes no warranty or representation as to the authority of the United States or the Master to enter into the agreement, and that the General Agent assumes no liability with respect to the goods described therein or the transportation thereof.

Article 3B. The General Agent agrees, without prejudice to its rights under the provisions of Articles 8 and 16 hereof, to:

(a) Perform the duties required to be performed by it hereunder in an economical and efficient manner, and exercise due diligence to protect and safeguard the interests of the United States in all respects and to [fol. 72c] avoid loss and damage of every nature to the United States;

(b) Exercise due diligence to see that all Bills of Lading are properly issued, all wharf receipts for freight are non-negotiable, and where required, a freight contract or permit is issued for each shipment;

(c) Furnish and maintain during the period of this Agreement, at its own expense, a bond with sufficient surety, in such amount as the United States shall determine, such bond to be approved by the United States as to both sufficiency of surety or sureties and form, and to be conditioned upon the due and faithful performance of all and singular the covenants and agreements of the General Agent contained in this Agreement, including, without limitation of the foregoing, the condition faithfully to account to the United States for all funds collected and disbursed and funds and property received by the General Agent or its agents. The General Agent may, in lieu of furnishing such bond, pledge direct or fully guaranteed obligations of the United States of America of the face value of the penalty of the bond under an agreement satisfactory in form to the United States;

(d) Without the consent of the United States, sell, assign or transfer, either directly or indirectly or through any reorganization, merger or consolidation, this Agreement or an interest therein, nor make any agreement or arrangement whereby the service to be performed hereunder is to be performed by any other person, whether an agent or otherwise, except as provided in Article 6 hereof.

Article 4. (a) The General Agent and, to the extent required by the United States, every related or affiliated company or holding company of the General Agent, authorized as provided in Article 13 hereof, to render any service or to furnish any stores, supplies, equipment, provisions, materials or facilities which are for the account of the United States under the terms of this Agreement, shall (1) keep its books, records and accounts relating to the management, operation, conduct of the business of and maintenance of the vessels covered by this Agreement in [fol. 72d] such form and under such regulations as may be prescribed by the United States; and (2) file, upon notice from the United States, balance sheets, profit and loss statements, and such other statements of operation, special reports, memoranda of any facts and transactions, which, in the opinion of the United States, affect the results in the performance of, or transactions or operations under this Agreement.

(b) The United States is hereby authorized to examine and audit the books, records and accounts of all persons referred to above in this Article whenever it may deem it necessary or desirable.

(c) Upon the willful failure or willful refusal of any person described in this Article to comply with the provisions of this Article, the United States may rescind this Agreement.

Article 5. At least once a month the United States shall pay to the General Agent as full compensation for the General Agent's services hereunder, such fair and reasonable amount as the Administrator, War Shipping Administration, shall from time to time determine: Provided, That with respect to vessels allocated before February 25, 1942, compensation shall not be less than the amount of earnings

which the General Agent would have been permitted to earn under any applicable previously existing bareboat charters, preference agreements, commitments, rules or regulations of the United States Maritime Commission until the earliest termination date permissible thereunder as of March 22, 1942. Such compensation shall be deemed to cover, but without limitation, the General Agent's administrative and general expense (as presently itemized in General Order No. 22 of the United States Maritime Commission), advertising expense, taxes (other than taxes for which the General Agent is reimbursed under Article 7 hereof), and any other expenses which are not directly and exclusively applicable to the maintenance, management, operation or the conduct of the business of the vessels hereunder.

Article 6. The General Agent shall exercise due diligence in the selection of agents. Such agents shall be subject to disapproval by the United States and any agency agreement shall be terminated by the General Agent whenever the United States shall so direct. Any compensation payable by the General Agent to its agents for services rendered in connection with the vessels assigned hereunder shall be subject to approval by the United States. In the event that any of the vessels covered by this Agreement are operated in a service in which an American citizen maintained a berth operation with American flag vessels on September 1, 1939, the General Agent, upon request of the United States, will assign such vessels to such berth operators as agents as may be appropriate under form of agreement prescribed by the United States. Agency fees or equivalent allowances for branch offices in accordance with schedules approved by the United States will be reimbursable under Article 7 hereof.

Article 7. The United States shall reimburse the General Agent at stated intervals determined by the United States for all expenditures of every kind made by it in performing, procuring or supplying the services, facilities, stores, supplies or equipment as required hereunder, *excepting* general and administrative expense (as presently itemized in General Order No. 22 of the United States Maritime Commission), advertising expense, taxes (other than sale and similar taxes or foreign taxes of any kind to the extent determined by the United States to be classifiable as voyage expenses hereunder) and any other expenses which are not

directly and exclusively applicable to the maintenance, management, operation or the conduct of the business of the vessels hereunder. The General Agent shall be reimbursed for sales and similar taxes or foreign taxes of any kind to the extent determined by the United States to be classifiable as voyage expenses hereunder if the General Agent shall have used due diligence to secure immunity from such taxation. To the extent not recovered from insurance, the United States shall also reimburse the General Agent for all crew expenditures, accruing during the term hereof) in connection with the vessels hereunder, including, without limitation, all disbursements for or on account of wages, extra compensation, overtime, bonuses, penalties, subsistence, repatriation, travel expense, loss of personal effects, maintenance, cure, vacation allowances, damages or compensation for death or personal injury or illness, and insurance premiums, required to be paid by law, custom, or by the terms of the ship's articles or labor agreements, or by action of the Maritime War Emergency Board, any payments [fol. 72f] made by the General Agent to a pension fund in accordance with a pension plan in effect on the effective date of this Agreement with respect to the officers and members of the crew of said vessels who are entitled to benefits under such plan, on the effective date of this Agreement, for the amount of any social security taxes which the General Agent is or may be required to pay on behalf of the officers and crew of said vessels as agent or otherwise. The United States may disallow, in whole or in part, as it may deem appropriate, and deny reimbursement for, expenses which are found to have been made in willful contravention of any outstanding instructions or which were clearly improvident or excessive.

Any moneys advanced to bonded persons by the General Agent for ship disbursements which are lost by reason of a casualty to the Vessel on which the money so advanced is carried shall in the event of such loss be considered an expense of the General Agent, subject to reimbursement as is in the Article 7 provided.

The United States may advance moneys to the General Agent to provide for disbursements hereunder in accordance with such regulations or conditions as the United States may from time to time prescribe.

Article 8. The United States shall, without cost or expense to the General Agent, procure or provide insurance

against all insurable risks of whatsoever nature or kind relating to the vessels assigned hereunder (which insurance shall include the General Agent and the vessel personnel as assureds) including, but without limitation, marine, war and P. & I. risks, and all other risks or liabilities for breach of statute and for damage caused to other vessels, persons or property, and shall defend, indemnify and save harmless the General Agent against and from any and all loss, liability, damage and expense (including costs of court and reasonable attorneys' fees) on account of such risks, and liabilities, to the extent not covered or not fully covered by insurance. The General Agent shall furnish reports and information and comply fully with all instructions that may be issued with regard to all salvage claims, damages, losses or other claims. Neither the United States nor the insurance underwriters shall have any right of subrogation against the General Agent with respect to such risks. The United States may assume any of the foregoing risks except [fol. 72g] those relating to P. & I. risks and collision liabilities. At all times during the period of this Agreement, the United States shall at its own expense provide and pay for insurance with respect to each vessel hereunder against protection and indemnity marine and war risks, and collision liabilities without limit as to liability as to the amount of any claim or the aggregate of any claims thereunder. The United States at its election may write all or any such insurance, including that against P. & I. and collision liabilities, in its own fund, pursuant to a duly executed policy or policies. Neither the United States nor the insurance underwriters shall have any right of subrogation against the General Agent with respect to any of the foregoing risks. All insurance hereunder shall cover both the United States and the General Agent.

Article 9. In the event of general average involving vessels assigned to the General Agent under this Agreement, the General Agent shall comply fully with all instructions issued by the United States in that connection including instructions as to the appointment of adjuster, obtaining general average security and asserting liens for that purpose unless otherwise instructed, and supplying the adjuster with all disbursements accounts, documents and data required in the adjustment, statement and settlement of the general average. Reasonable compensation for and

general average allowances to the General Agent in such cases shall be in accordance with directions, orders or regulations of the United States.

Article 10. Salvage claims for services rendered to vessels other than vessels owned or controlled by the United States shall be handled by, and be under the control of, the United States. Salvage awards for services rendered to other vessels owned or controlled by the United States including the vessels hereunder shall be made by the United States. The General Agent shall furnish the United States with full reports and information on all salvage services rendered.

Article 11. (a) The United States shall have the right to terminate this Agreement at any time as to any and all vessels assigned to the General Agent and to assume control forthwith of any and all said vessels upon fifteen (15) days' written or telegraphic notice.

[fol. 72h] (b) Upon giving to the United States thirty (30) days' written or telegraphic notice, the General Agent shall have the right to terminate this Agreement, but termination by the General Agent shall not become effective as to any vessel until her arrival and discharge at a continental United States port.

(c) This Agreement may be terminated, modified, or amended at any time by mutual consent.

Article 12. In case of termination of this Agreement, whether upon expiration of the stated period hereof or otherwise, all vessels and other property of whatsoever kind then in custody of the General Agent pursuant to this Agreement, shall be immediately turned over to the United States, at times and places to be fixed by the United States, and the United States may collect directly, or by such agent or agents as it may appoint, all freight moneys or other debts remaining unpaid: Provided, That the General Agent shall, if required by the United States, adjust, settle and liquidate the current business of the vessels. Notwithstanding the foregoing provisions, when the United States shall so direct, the General Agent shall complete the business of voyages commenced prior to the date as of which the Agreement shall be terminated, and, if directed by the United States and subject to any instruc-

tions issued by the United States with respect thereto, the General Agent shall continue to book cargo for the vessels for the next voyages after the termination of this Agreement. No such termination of this Agreement shall relieve either party of liability to the other in respect of matters arising prior to the date of such termination or of any obligation hereunder to indemnify the other party in respect of any claim or demand thereafter asserted, arising out of any matter done or omitted prior to the date of such termination.

Article 13. Agreements or arrangements with any interested or related company to render any service or to furnish any stores, supplies, equipment, materials, repairs, or facilities hereunder shall be submitted to the United States for approval as to employment. Unless and until such agreements or arrangements have been approved by the United States, compensation paid to any interested or related company shall be subject to review and readjustment by the United States. In connection with such review and readjustment, the United States may deny reimbursement [fol. 72i] hereunder of any portion of such compensation which it deems to be in excess of fair and reasonable compensation. The United States may also deny reimbursement, in whole or in part, of compensation under any arrangement or agreement with an interested or related company which it deems to be exorbitant, extortionate or fraudulent. The term "interested company" shall mean any person, firm, or corporation in which the General Agent, or any related company of the General Agent, or any officer or director of the General Agent, or any employee of the General Agent who is charged with executive or supervisory duties, or any member of the immediate family of any such officer, director or employee, or any officer or director of any related company of the General Agent or any member of the immediate family of an officer or director of any related company of the General Agent, owns any substantial pecuniary interest directly or indirectly. The term "related company", used to indicate a relationship with the General Agent for the purposes of this Article only, shall include any person or concern that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the General Agent. The term "control" (including

the terms "controlled by" and "under common control with" as used herein means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the General Agent (or related company), whether through ownership of voting securities, by contract, or otherwise.

Article 14. The General Agent shall, unless otherwise instructed, subject to such regulations, instructions, or methods of supervision and inspection as may be required or prescribed by the United States, arrange for the repair of the vessels, covering hull, machinery, boilers, tackle, apparel, furniture, equipment, and spare parts, and including maintenance and voyage repairs and replacements, for the account of the United States, as may be necessary to maintain the vessels in a thoroughly efficient state of repair and condition. The General Agent shall exercise reasonable diligence in making inspections and obtaining information with respect to the state of repair and condition of the vessels, and so advise the United States from time to time, in order that the United States may satisfy itself that the vessels are being properly maintained, and [fol. 72j] shall cooperate with representatives of the United States in making any inspections or investigations that the United States may deem desirable.

Article 15. The United States shall, when it may legally do so, have the advantage of any existing, or future, contracts of the General Agent for the purchase or rental of materials, fuel, supplies, facilities, services, or equipment, if this may be done without unreasonably interfering with the requirements of other vessels owned or operated by the General Agent.

Article 16. (a) The United States shall indemnify, and hold harmless and defend the General Agent against any and all claims and demands (including costs and reasonable attorney's fees in defending such claim or demand, whether or not the claim or demand be found to be valid) of whatsoever kind or nature and by whomsoever asserted for injury to persons or property arising out of or in any way connected with the operation or use of said vessels or the performance by the General Agent of any of its obligations hereunder, including, but not limited to any and all claims and demands by passengers, troops, gun crews, crew mem-

bers, shippers, third persons, or other vessels, and including but not limited to claims for damages for injury to or loss of property, cargo, or personal effects, claims for damages for personal injury or loss of life, and claims for maintenance and cure.

(b) In view of the extraordinary wartime conditions under which vessels will be operated hereunder, the General Agent shall be under no responsibility or liability to the United States for loss or damage to the vessels arising out of any error of judgment or any negligence on the part of any of the General Agent's officers, agents, employees, or otherwise. However, the General Agent may be held liable for loss or damage not covered by insurance or assumed by the United States as required under Article 8 of this Agreement, if such loss or damage is directly and primarily caused by willful misconduct of principal supervisory shoreside personnel or by gross negligence of the General Agent in the procurement of licensed officers or in the selection of principal supervisory shoreside personnel.

(c) In the event that the General Agent shall perform any stevedoring, terminal ship repair or similar service [fol. 72k] for the vessels hereunder at commercial rates, the General Agent shall have all the obligations and responsibilities of the person performing such services under the standard or other approved form of contract with the United States or, in the absence of such standard or approved form, under usual commercial practice.

(d) The General Agent shall be under no liability to the United States of any kind or nature whatsoever in the event that the General Agent should fail to obtain officers or crews for the operation of the vessels, or fail to arrange for the fitting out, refitting, maintenance or repair of said vessels, or fail to perform any other service hereunder by reason of any labor shortage, dispute or difficulty, or any strike or lockout or any shortage of material or any act of God or peril of the sea or any other cause beyond the control of the General Agent whether or not of the same or similar nature; or shall do or fail to do any act in reliance upon instructions of military or naval authorities.

Article 17. Wherever and whenever herein any right, power, or authority is granted or given to the United States,

such right, power, or authority may be exercised in all cases by the War Shipping Administration or such agent or agents as it may appoint or by its nominee, and the act or acts of such agent or agents or nominee, when taken, shall constitute the act of the United States hereunder. In performing its services hereunder, the General Agent may rely upon the instructions and directions of the Administrator, his officers and responsible employees, or upon the instructions and directions of any person or agency authorized by the Administrator. Wherever practicable, the General Agent shall request written confirmation of any oral instructions or directions so given.

Article 18. (a) The General Agent warrants that it has not employed any person to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul this Agreement or in its discretion to deduct from any amount payable hereunder the amount of such commission, percentage, brokerage or contingent fee.

(b) In any act performed under this Agreement, the General Agent and any subcontractor shall not discriminate [fol. 721] against any citizen of the United States on the ground of race, creed, color or national origin.

Article 19. No person elected or appointed a member of or delegate to Congress or a Resident Commissioner, directly or indirectly, himself or by any other person in trust for him, or for his use or benefit, or on his account shall hold or enjoy this Agreement in whole or in part, except as provided in Section 206, Title 18, U. S. C. The General Agent shall not employ any member of Congress, either with or without compensation, as an attorney, agent, officer or director.

Article 20. Subject to the provisions of Article 5 hereof, this Agreement is in substitution of and hereby abrogates and replaces the so-called 1c Bareboat Charter Agreements relating to the assignment or allocation to the General Agent of the vessels listed on Exhibit A hereto from the dates stated on such exhibit. Preference Agreements relating to such allocated vessels shall be terminated and abrogated as of the same dates.

All rights and obligations of the parties under said abrogated Bareboat Charter and Preference Agreements are hereby cancelled and this Agreement is made retroactive to the cancellation dates thereof as stated on Exhibit A hereto. However, the General Agent shall be reimbursed for any expenditure made before the earliest permissible cancellation date after March 22, 1942, under said agreements to the extent that such expenditure would have been considered in computing additional charter hire or freight under such agreements. This Agreement, unless sooner terminated, shall extend until six months after the cessation of hostilities.

In Witness Whereof, the Parties hereto have executed this Agreement in triplicate the day and year first above written.

United States of America, by E. S. Land, Administrator, War Shipping Administration; by D. F. Houlihan, for the Administrator; Moore-McCormack Lines, Inc., by Henry P. Molloy, Vice-President.

Attest: Albert F. Chrystal, Assistant Secretary.

Approved as to form: W. Radner, General Counsel, Beach. Cates. (Seal.)

[fol. 73] PLAINTIFF'S EXHIBIT No. 11

Minutes of Port Committee Meeting Between Pacific American Shipowners Association and Marine Cooks and Stewards' Association of the Pacific Coast.

Time: February 2, 1945 at 2:30 P. M.

Place: Room 310 Financial Center Bldg.

Present: For the Association—Messrs. Brown, Bannister, Capt. Trout. For the Union—Messrs. Burke, Bryson Fritchie.

Also Present: Mr. Cannon, Matson Navigation Company; Mr. George Larsen, for the Association; Messrs. Grant and Williams, Cooks' Union.

Purpose of Meeting: To discuss:—Various claims for overtime and other matters submitted by the Union to the Association in a letter dated January 18, 1945.

Mr. Brown opened the meeting and requested Mr. Burke

71

to proceed with the matters for which the meeting had been called.

1. It was brought out by Mr. Burke that members of the Steward's Department are being required to make ice. Mr. Burke specifically referred to a claim by a Butcher on the SS Sea Devil, American Hawaiian Steamship Company, who had been required not only to pull the ice but also to operate the ice machines. Mr. Burke claimed that the work had been performed outside the Butcher's regular hours.

Following discussion of the matter, it was agreed and understood that members of the Steward's Department should not be required to make ice or pull ice but that they will distribute the ice once it is pulled, regardless of where the ice machine is located. It was further understood members of the Steward's Department will take care of placing drinking water in Steward's chill boxes without overtime. In this connection, it was brought out by Mr. Brown, that Mr. Malone, Secretary of the Fireman's Union had agreed that members of his department (Wipers) will pull the ice as long as the ice machines are located within the jurisdiction of the Engine Department.

2. *SS Celestial, American President Lines*

This is a claim for overtime by the Steward's Department for commencing serving the crew members their meals after 5:30 P. M. It was pointed out by representatives of the Company that the reason for the meals in question being served late was on account of a dispute between the departments. [fol. 74] It was also stated the Steward's Department had failed to serve crew members off watch their meals promptly and as a result they could not eat and relieve the men on watch in time to get into the mess room before 5:30 P. M. However, when the vessel was in port the matter was straightened out to everybody's satisfaction and it is not anticipated that any trouble on this question will arise on this vessel in the future. It was agreed by the parties a further investigation would be made upon the return of the vessel to San Francisco and if it was found that the Company's understanding is not correct, some adjustment would be made.

3. *SS Cape Meats, Matson Navigation Company*

If was claimed by the Union that the Messmen had been required to serve the Captain his meals in his room at sea and in port. The Employers' Committee agreed that as a general rule in the absence of special circumstances the Captains on freighters in port should take their meals in the saloon. It was agreed that at Sea the Master might have his meals brought to his room or the bridge when, for the safety of the vessel due to navigating in convoy, hazardous areas, or under other conditions, the Master could not spare sufficient time away from his duties to go to the saloon to eat.

It was agreed that the justification for meals being served in the Master's room or on the bridge either in port or at sea must be real and the Master must be the judge of the necessity. It was further agreed if any Master arbitrarily had his meals served in his room without justification, overtime would be paid.

Also, the Union claimed overtime for the Butcher because he had been cutting up meat between 7:00 P. M. and 8:00 P. M. This, it was stated, was necessary because the meat which had come aboard in Australia had come in half sides. Some doubt was expressed by the Employers' Committee that it would be necessary for the Butcher to work overtime merely because the meat had not been fabricated as is ordinarily done in United States Ports. Mr. Cannon agreed he would look into this matter also.

4. *SS Henry Scott, Oliver J. Olson & Company*

The Union's Committee brought up a similar claim for cutting up meat. It was brought out that the Butcher in question had received three hours' overtime per day because of military passengers carried. This is a further claim for two additional hours' overtime.

The claim was rejected by the Employers' committee on the ground that it is the regular and customary duty of this rating to cut up the meat. That the furnishing of pre-cut and boned cuts, where obtainable, has not changed the customary duties. If any additional meat had to be cut by reason of extra passengers carried, the three hours' daily overtime allowed under the agreement was complete compensation.

5. *SS Elmira Victory, Alaska Steamship Company*

This is a claim for weekend overtime in ports other than the home port. It was developed that the vessel had left Portland, Oregon, for Honolulu where she discharged part of her cargo and then proceeded to Eniwetok with the remainder of the cargo, together with other cargo picked up at Honolulu. It was further developed that the claim had been previously discussed between members of the Association's staff and the Union's representatives at San Francisco; namely, Messrs. Brown, Burke and Bryson and that [fol. 75] an adjustment of the claim had been made whereby the crew would receive weekend overtime at Honolulu but not at Eniwetok. Resurrection of the claim for additional overtime when at Eniwetok had come from Harris in Seattle who apparently was not fully informed as to the facts in the case.

In the discussion which followed, it was pointed out to Mr. Burke by Mr. Brown that apparently Harris is of the opinion that an adjustment of the case is not satisfactory. However, since the adjustment was made in accordance with the rules and facts as presented, the decision as per previous understanding arrived at between the parties should stand. On this basis the Committee's decision was to allow overtime only at Honolulu.

6. *Coastwise Pacific Far East Line*

The Union's representative maintained that this company had no designated representative in New York and for that reason it becomes difficult at times to get disputes settled. In discussing the matter Captain Trout stated that as a rule their Masters, when confronted with questionable claims, phone the San Francisco office to get advice as to disposal of claims. This practice, according to Captain Trout, has worked out very satisfactorily in the past. However, Captain Trout agreed that he would investigate the Union's complaint.

7. *SS Vernon Kellogg, Grace Line*

This is a claim for weekend overtime at the port of Laurene Marques, East Africa, and also Rio De Janeiro. It was agreed that the claims be settled on the basis of the Memorandum dated May 15, 1942. Accordingly, the crew

would be entitled to weekend overtime in one port in the African area but not in South America.

8. *SS Mariposa, Matson Navigation Company*

Claim for Boston as the home port during the period in which Boston was the turn-around port while the vessel was trading to ports in Iceland. It was the opinion of the Committee that the crew was entitled to one port (home) in the continental United States. That Boston should be considered the home port for this purpose in respect to this particular vessel on the voyages in question.

9. *SS Joseph Holmes, Union Sulphur Company*

This is a claim for overtime while vessel was stranded somewhere in the South Pacific. The claim was rejected by the Employers' Committee on the ground that the work performed in an emergency involving the safety of the vessel for which no overtime is payable under the agreement.

10. *SS Margaret Schafer, Northland Transportation Company*

The Union claimed that a port should be designated in Alaska as the home port of the vessel because the ship was in shuttle service between ports in Alaska. Mr. Brown agreed he will write the company in regard to this matter as the Association was not familiar with the situation.

11. *SS President Grant, American President Lines*

The Union brought up a matter of meals being served to troops and members of a salvage crew subsequent to the stranding of the vessel on February 26, 1944. The claim is for 30¢ per meal and involves some 15,000 odd meals. It was agreed that the Port Steward's staff of APL and the Union's Representatives would get together and check up on the number of meals served and when that is determined Mr. Brown will draft a letter of submission to WSA requesting consideration by the WSA of the Union's request for payment of the claim as it deems proper.

Meeting adjourned at 4:00 P. M.

[fol. 76]

PLAINTIFF'S EXHIBIT No. 3.

Form No. 31

Shepard Steamship Company

S/S George Davidson. Voy #1 Out. Date 11/27/43.
 Mr. Fred W. Fink. Rating, Able Seaman,
 Social Security #390-03-2421.

We hand you herewith the sum of \$744.95 covering your earned wages including overtime and bonus in full, for the period from June 8, 1943 to 11/26/43 computed as follows:

Wages	563.33	
	6.67	
Bonus	480	486.67
Overtime		175.53
Board & Lodging		202.80
Total		1428.33

Deductions:

Social Security	14.29
Victory Tax	46.83
Non Resident Alien Tax	
Board and Lodging	202.80
Cash Advance	148.23
Slops	21.23
Allotments	250.—
Fines & Other Deductions	
Total Deduction	683.38

Balance **744.95**

I hereby acknowledge Receipt of the Above Balance.
 _____, Signature,

This statement is issued in accordance with legal requirements.

NCG 722

United States Coast Guard

Seaman's Allotment Note

(Act of June 26, 1884, Section 10 as amended—U. S. C., title 46, sec. 599.)

Name of Ship: S.S. "George Davidson".
Now Bound on Voyage to: One or more ports in any part of the world.

Vancouver, Wash., June, 1943.

One month after date, pay the sum of Fifty and 00/100 dollars, part of the wages of Fred W. Fink engaged to serve as Able Seaman in the above-named ship, to Mrs. Gertrude Fink his wife for Maintenance and continue to make such payments monthly for Voyage months.
\$50.00.

To Shepard Steamship Co., Thomas C. Price, Master.
Payable at 6110 N. E. Hoyt St., Fred W. Fink, Seaman.
Approved after examination of the allotment and of the parties to it as prescribed by law.

Portland, Oregon.

Rudolph Grady, U. S. C. G. Shipping Commissioner,
Portland, Ore.

(Endorsed) Allotment to Mrs. Gertrude Fink. Relationship Wife. Street and Number 6110 N. E. Hoyt Street. City and State, Portland, Oregon. \$50.00.

* It shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents, parents, wife, sister, or children, or for deposits to be made in an account opened by him and maintained in his name either at a savings bank or a United States postal savings depository subject to the governing regulations thereof.

[fol. 78] DEFENDANT'S EXHIBIT "H"

War Shipping Administration, 200 Bush Street, San Francisco, California

May 24, 1943.

Shepard SS. Co., Railway Exchange Building, Portland, Oregon.

Subject: SS George Davidson

GENTLEMEN:

On May 22d we advised you that the above vessel was scheduled for the India service of the British Ministry of War Transport under berth sub-agency of the American President Lines.

Please disregard this letter, as the destination of this vessel is now the Red Sea, and it will load under berth sub-agency of the American Mail Lines.

Will you kindly contact the American Mail Line and ascertain who they expect to represent them as berth sub-agent at destination. It is our desire that the same agent that acts as destination for the berth sub-agent also be named by you as agent in husbanding the vessel.

Yours very truly, H. N. Middleton, Chief of Allocations and Assignments.

HNM/rh

cc—Mr. Keating, WSA, Washington D. C.; Mr. Darr, WSA, Washington, D. C.; Mr. Brown, WSA, Seattle, Washington; Mr. Powell, WSA, Portland, Oregon; Mr. Patten, WSA, San Francisco; British Ministry of War Transport; American Mail Line, Seattle, Washington; American President Lines, San Francisco.

[fol. 79] War Shipping Administration 200 Bush Street, San Francisco, California

May 25, 1943.

Shepard SS. Co., Railway Exchange Building, Portland, Oregon.

Subject: SS George Davidson

GENTLEMEN:

Please disregard all previous letters concerning the employment of this vessel, which is now assigned to the India service of the British Ministry of War Transport under berth sub-agency of the American President Lines.

As previously requested, kindly contact the American President Lines and ascertain who they expect to represent them as berth sub-agent at destination. It is our desire that the same agent that acts at destination for the berth sub-agent also be named by you as agent in husbanding the vessel.

Yours very truly, H. N. Middleton, Chief of Allocations and Assignments.

HNM/rh

cc—Mr. Keating, WSA, Washington D. C.; Mr. Darr, WSA, Washington, D. C.; Mr. Brown, WSA, Seattle, Washington; Mr. Powell, WSA, Portland, Oregon; Mr. Patten, WSA, San Francisco; British Ministry of War Transport; American Mail Line, Seattle; Washington; American President Lines, San Francisco.

[fol. 80] War Shipping Administration, 200 Bush Street,
San Francisco, California

May 22, 1943.

Shepard SS. Co., Railway Exchange Building, Portland, Oregon.

Subject: SS George Davidson

GENTLEMEN:

The above vessel, allocated to you for operation under Service Agreement Form GAA, is expected ready for delivery at Portland about June 1.

This vessel has been assigned to the India service of the British Ministry of War Transport under berth sub-agency of the American President Lines.

Will you kindly contact the American President Lines and ascertain who they expect to represent them as berth sub-agent at destination. It is our desire that the same agent that acts at destination for the berth sub-agent also be named by you as agent in husbanding the vessel.

Yours very truly, H. N. Middleton, Chief of Allocations and Assignments.

HNM/rh

cc—Mr. Keating, WSA, Washington, D. C.; Mr. Darr, WSA, Washington, D. C.; Mr. Patten, WSA, San Francisco; British Ministry of War Transport; American President Lines, San Francisco.

[fol. 81] DEFENDANT'S EXHIBIT "J"

June 2, 1943.

American President Lines, Ltd., 311 California Street, San Francisco, California.

Attn: Mr. W. K. Vareoe, Assistant Freight Traffic Manager.

GENTLEMEN:

You or your designated nominee are hereby authorized to enter into and do all things necessary for the proper preparation and execution on my behalf and as my agent of Bills of Lading or other contracts for the carriage of goods or passengers on board the SS George Davidson, on her current voyage as Berth sub-Agents.

(S.) Thomas C. Price (Sgd.), Master.

[fol. 82]

DEFENDANT'S EXHIBIT "I"

American President Lines, 311 California Street, San Francisco, California U.S.A., Trans-Pacific Service, Round-World Service

May 27, 1943.

Shepard Steamship Company, Railway Exchange Building, Portland, Oregon.

SS George Davidson

GENTLEMEN:

In accordance with official advice from the War Shipping Administration, San Francisco, we have, as you know, been nominated Berth sub-Agent for the above-named vessel for a voyage to the Middle East account British Ministry of War Transport.

In compliance with instructions contained in W.S.A. General Order No. 16 (War Shipping 7/1/42), we would greatly appreciate it if you would ask the Master of this vessel to sign the usual letter attached authorizing American President Lines to sign bills of lading on his behalf, returning the signed letter to us for our permanent record.

Yours very truly, W. K. Vareoe, Assistant Freight Traffic Manager. The United States of America, War Shipping Administration, By American President Lines, Ltd. (Agent).

Attachment.

[fol. 83]

DEFENDANT'S EXHIBIT "G"

Form WSA 7085. Rev. June, 1942

War Shipping Administration, Division of Operations,
Washington

Service Record

Date: — — —

Name in full

(Last) (First) (Middle)

Permanent home address Phone

(City) (State)

Born—Town State Country

Month Day Year

Naturalized at Date

Height Weight Married or single

Grade of license Serial and issued numbers

License issued at Date of issue

Naval Reserve rank

Where received training and education not shown under
particulars of sea service?

(Signature)

On what ship are you accepting employment?

What position?

Date

(See Other Side for Particulars of Sea Service)

Applicant's complete record must be given in full, and
dates of entering and leaving each position accurately
shown.

[fol. 84] Particulars of Sea Service

Vessel *Size **Type Rating From— To— Owner

To be inserted after each vessel.

* This form not required to be made out when trans-
ferring from ship to ship. In such case form No. 7085-A
is required. 16-6062-2.** Column "Size"—Deck officers, gross tonnage; engineer
officers, horsepower.** Column "Type"—Deck officers, steam, sail, or auxil-
iary; engineer officers, reciprocating, turbine, or Diesel.

[fol. 85]

DEFENDANT'S EXHIBIT "B"

Serial No. G829958

Department of Commerce, Bureau of Marine Inspection and Navigation

Certificate of Discharge

Fred W. Fink (Signature of Seaman); Thomas C. Price (Master of Vessel.)

I Hereby Certify that the above entries were made by me and are correct and that the signatures hereto were witnessed by me.

Dated this 27th day of Nov., 1943.

J. P. Phillips, United States Shipping Commissioner (Or Master of Vessel.)

Act Dp.

Note—Whenever a master performs the duties of the shipping commissioner under this act, the master shall sign the certification on the line designated for the shipping commissioner's signature.

Gas issued: 12/1/43.

Name of Seaman: Fred W. Fink, Certificate.

Citizenship: U. S. A. of Identification No. z354110.

Rating: Able Seaman.

Date of Shipment: June 8, 1943.

Place of Shipment: Vancouver, Wash.

Date of Discharge: Nov. 26, 1943.

Place of Discharge: Baltimore, Md.

Name of Ship: George Davidson.

Official No. 243491.

Class of vessel: Steam (steam, Motor, Sail, or Barge.)

Nature of Voyage: Foreign (Foreign, Intercoastal or Coastwise.)

[fol. 86]

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE
COUNTY OF MULTNOMAH

No. 154958

FRED W. FINK, Plaintiff,

vs.

SHEPARD STEAMSHIP COMPANY, a Corporation, Defendant

Proposed Bill of Exceptions (Presented February 14, 1947—
Filed February 19, 1947)

TENDER AND SERVICE

To the Clerk:

The above named defendant, Shepard Steamship Company, herewith tenders a proposed bill of exceptions in the above entitled cause, consisting of a transcript of the whole testimony and all the proceedings had at the trial, including the exhibits offered and received or rejected, defendant's requested Instruction No. 1, the instructions of the Court to the jury, defendant's motion for judgment notwithstanding the verdict, or, in the alternative, motion for new trial, the Court's memorandum opinion denying said motion, and the order denying the same. This bill of exceptions contains all the evidence and a complete record of the trial.

(S.) Wood Mathiessen & Wood, Erskine B. Wood,
Attorneys for Defendant.

Service of this proposed bill of exceptions, on February 13th, 1947, by delivery of a copy, is hereby admitted.

(S.) Edwin T. Hicks, of Attorneys for Plaintiff.

[fols. 87-100] IN CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

JUDGE'S CERTIFICATE

I, the undersigned, Judge of the above entitled court, before whom this case was tried, hereby certify that the foregoing contains all of the testimony and a record of all

the proceedings had at the trial, defendant's requested instruction No. 1, the instructions of the Court to the jury; defendant's motion for judgment notwithstanding the verdict, or, in the alternative, motion for new trial, the Court's memorandum opinion and order denying said motion; and that the said transcript, instructions requested by the defendant, motion for new trial, memorandum opinion and order denying same, together with the exhibits referred to in said transcript and made a part of the bill of exceptions, are a complete record of all the evidence and proceedings had at the trial of this cause and on the motion for a new trial, and same are now settled and approved as a true bill of exceptions in this cause.

(S.) Walter L. Tooze, Judge

Dated February 19th, 1947.

[fols. 101-102] IN CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

DEFENDANT'S REQUESTED INSTRUCTION

Defendant Shepard Steamship Company requests the Court to give the following instruction to the Jury:

1. You are instructed to return your verdict for the defendant.

(Signed) Wood, Matthiessen & Wood, Attorneys for Defendant.

[fol. 103]

COLLOQUY

The Court: In this case of Fink vs. Shepard Steamship Company it appears that there are really two fundamental problems. The first problem to be solved is the one touching the employment of the plaintiff. That is, by whom was he employed? Was he employed by the defendant Steamship Company or by the War Shipping Administration? And if the Court should be of the opinion as a matter of law, upon the facts presented, and particularly the written evidence, that the plaintiff was not an employee of the defendant, then that would terminate the case in favor of the defendant as a matter of law. On the other hand, should the Court arrive at the conclusion that, on the undisputed facts in the case, the plaintiff was an employee of the defendant Steamship Company within the meaning of the law,

then, of course, there would remain for decision by a jury, the question of whether the defendant was negligent in one or more respects as charged against the defendant in plaintiff's first amended complaint and, if negligent in one or more of such particulars, whether such negligence was the proximate cause of the injuries of which he complains, and, if that was determined by a jury as a matter of fact, the extent of those injuries and the damages to be awarded therefor.

In order to expedite the trial of the case, and for the convenience of both parties, it has been stipulated by the plaintiff and by the defendant that there shall first be tried before the Court, without the intervention of the jury, the question of whether or not the plaintiff was an employee of the defendant.

Mr. Hicks: May I make an observation, your Honor, simply for the purpose of clarification. May we suggest that this stipulation on this particular phase of the liability [fol. 104] question is simply this: as to whether or not the plaintiff has a right to maintain his suit against the defendant company under the Jones Act.

The Court: Yes.

Mr. Hicks: That embraces the principal of whether he has such right pro hac vice, or whether he has such right as an employee under the accepted definition of the term. It seems to me the general statement as to whether or not he has the right to sue under the Jones Act, under the situation, is more accurate, perhaps.

The Court: Is that satisfactory?

Mr. Wood: That is satisfactory.

The Court: Very well. I think that more correctly states the position than the Court stated. So that will be considered the stipulation in that respect.

It is also stipulated and agreed that this present jury already empaneled on the trial of this case may be excused and dismissed from further consideration of this case, but that if and when the Court should determine that the plaintiff has a cause of action against the defendant and a right to sue the defendant, then forthwith another jury shall be empaneled to try the remaining issues in the case, which have to do with the matter of whether or not there was negligence, the matter of proximate cause, and the matter of injuries and damage. And when such other jury is em-

paneled the case will be treated just the same as though this jury had been continued over for that purpose. • • •

3. It is agreed that that certain agreement between the United States of America, acting by and through the War Shipping Administration, and Shepard Steamship Company, the same being a standard form of agreement commonly known and referred to as GAA 4-4-42 • • • Such form of agreement referred to is found beginning at page 150 of the said printed transcript of record heretofore referred to, and it is stipulated that a copy thereof may be [fol. 105] substituted for the purposes here. And it is further stipulated and agreed that the vessel "George Davidson" was allocated to the defendant Shepard Steamship Company pursuant to the terms of such General Agency Agreement. And it is agreed that the defendant company executed the form of agreement herein designated as of date June 11, 1942, and that pursuant to such agreement so executed certain vessels, including the "SS George Davidson", were allocated to the defendant company, to-wit, under said contract. • • •

Portland, Oregon, Friday, September 13, 1946, at 10:00 o'clock A. M., Court reconvened, pursuant to adjournment, and proceedings herein were resumed as follows:

The Court: All right, gentlemen. You may proceed. Call your witnesses.

CHARLES W. ATKINS was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Peterson:

Q: Your name is Charles Atkins?

A. Charles Atkins, yes.

Q. What is your occupation, Mr. Atkins?

A. I am at present patrolman for the Sailors' Union of the Pacific.

Q. What are your duties in that capacity?

A. Making all the ships for the Union, transacting the Union business between the companies and the men aboard the vessels in regards to pay-offs and signing on.

Mr. Wood: Could you speak up? I can't hear you over here.

A. My position with the Union is transacting Union business [fol. 106] ness between the shipowners and the ships regarding the payoff on the vessels and signing on vessels, signing crews on at the beginning of the voyages; seeing that the agreements are lived up to and that everything is in order.

The Court: You are sort of a business agent?

A. Yes, sir; in a way, but it is not called that in my union. My specific job is termed patrolman.

The Court: That is the Sailors' Union of the Pacific?

A. Yes.

By Mr. Peterson:

Q. Mr. Atkins, how long have you held your present position with the union?

A. Since February, 1942.

Q. Prior to that time what was your occupation?

A. I was one of the sailors aboard the vessels.

Q. How long have you followed the sea?

A. Off and on for close to thirty years.

Q. Mr. Thomas, I hand you Plaintiff's Exhibit No. 1 for identification and ask you what that is.

A. This is the Sailors' Union agreement with the Pacific American Steamship Owners Association, the agreement that was in force from the date stated on the face of the agreement.

Q. And it is stated on the face of the agreement that it is dated November 4, 1941, with the further notation "Amended October 1, 1944." Is that correct?

A. That is correct.

Q. Now, is this the contract between the S. U. P.; your union, and the Pacific Steamship Owners Association—do I correctly state that?

A. Pacific American, I believe.

Q. Pacific American Steamship. Will you point out to me [fol. 107] the correct title of the association? This, then, is between the Sailors' Union of the Pacific, your union, and the Pacific American Shipowners Association?

A. That is correct.

Q. Now, do you know of your own knowledge whether or

not the Shepard Steamship Company is a member of the Pacific American Shipowners Association?

A. They are.

Mr. Peterson: I offer this in evidence. You have seen it, Mr. Wood, I think.

Mr. Wood: Yes. I have no objection.

The Court: It will be admitted.

(The booklet above referred to, entitled "Agreement between Sailors' Union of the Pacific and Steamship Companies in the Intercoastal and Offshore Trade and the Alaska Lines," was thereupon received in evidence as Plaintiff's Exhibit 1.)

By Mr. Peterson:

Q. Now, Mr. Atkins, when you first held your position as a patrolman was this agreement that you have identified here in full force and effect?

A. It was.

Q. What have been your duties under the terms of this agreement?

A. My duties under that agreement is very specific. I am charged with visiting all the vessels that it is humanly possible for me to visit and ascertain whether or not the agreement is being lived up to.

Q. That the agreement is being lived up to by whom?

A. By both the employers and the men we place aboard the vessels as a union.

Q. What has been the practice in your experience as to the employment of sailors on board vessels?

[fol. 108] A. Would you state that again, please?

Q. What is the procedure for the employment of sailors on board vessels? I speak of the unlicensed deck personnel under the terms of this contract.

A. Well, under the terms of that contract the employers, either directly from their office or by the master, mate or purser, whoever is authorized in charge on the vessel to call for the men, they order the men directly from the Sailors' Union of the Pacific. We in turn, under the terms of the agreement, are charged with shipping those men if they are available.

Q. Now Section 3 of this contract reads: "The Sailors' Union of the Pacific agrees to furnish capable, competent

and satisfactory employees." Now, what you have described here is your understanding as to the way the union complies with this contract: They furnish employees as requested by the employers to man ships?

A. That is correct.

Q. Who makes the request to the union for the employment of a specific number of unlicensed personnel on board a particular vessel?

A. Well, that varies. In ordinary times, in peace times, and at the beginning of the war we adhered to an old policy whereby most of the men were ordered directly from the ships by either the master, the mate, or the purser, whoever was charged by the master, who was in command of the ship. They ordered the men in most cases directly, acting as agents for the company on the vessel.

Q. And requested a certain number of unlicensed deck personnel?

A. Requested whatever was necessary.

Q. Now, this contract, Section 5, provides: "The Union agrees that the Employers shall have the right, in their discretion, to reject men furnished who are considered unsuitable and unsatisfactory. In case any person is rejected, the Union agrees to furnish a prompt replacement. When any person is rejected, the employer shall furnish a statement in writing to the union stating the reason for the rejection. If the Union feels that any rejection has been unjust and has worked a hardship on the person, the Union shall without delay take the matter up with that particular employer and attempt to secure an adjustment." What constitutes a rejection by the employer?

A. Well, several things could enter into the picture. Primarily, if the union calls for a certain rating, the man is supposed to be qualified in that rating; the man shipped to fill the order is supposed to be qualified for that rating aboard the vessel. For instance, if it is an A. B.—able seaman—a boatswain or carpenter, those three fall within experienced categories, and if they are called for we are supposed to furnish a man who is competent to fill the position.

Q. Now, Section 6 of this agreement says: "If a satisfactory adjustment cannot be secured with the Employer, the Union shall thereupon refer the matter to the Port Committee, and the Port Committee shall then hear the case and

may order any adjustments that the circumstances in its judgment may warrant." I will ask you if, within your personal knowledge, has a Port Committee been set up under the terms of this contract in Portland, Oregon?

A. Oh, yes. Yes, there is. It has been in existence ever since—that is, immediately that the machinery could be set up after the agreement was drawn. Captain Dyer, of the old States Line, is the chairman of the Port Committee in Portland.

Q. Now, what is the function of the Post Committee with respect to the rejection of employees furnished by the union?

[fol. 110] The Court: Isn't that in the agreement?

Mr. Peterson: I want to show—it is here, your Honor. It says that they shall adjust grievances, and I want Mr. Atkins to explain what their function is; what they actually do.

A. Well, either in the case of a rejected employee, or if it is a controversy on some matter aboard the ship—for instance, borderline overtime that has been turned down in payment by the company, which we claim is just overtime—those cases are often referred to the Port Committee. And sometimes it is the employer, the steamship company, and sometimes it is the union that requests the Port Committee meeting. Either one can request in writing for a Port Committee meeting. And the Chairman of the Port Committee notifies all the Port Committee members and they meet, and whatever the controversy is is placed before the Port Committee, and their judgment is—in respect to the San Francisco Port Committee it is final and binding, but the port committees in the various outlying ports are subject to review by the San Francisco Port Committee.

The Court: Let me ask you generally: Did the Sailors' Union of the Pacific operate strictly under this contract?

A. Yes, your Honor; they did.

The Court: And all the ships during the war emergency were manned through your organization under the terms of this contract?

A. Yes.

By Mr. Peterson:

Q. Now then, within your knowledge, Mr. Atkins, in the Port of Portland, Oregon, has the Port Committee settled

grievances between individual members of the Sailors Union of the Pacific and the respective employers?

The Court: Do you mean steamship companies?

[fol. 111] The Court: The question is do you know of any disputes having been settled before this Port Committee as between the seamen that have been sent to the ships and the steamship companies?

Mr. Hicks: Steamship companies which are operating under general agency agreements.

The Court: Yes.

Mr. Peterson: Yes.

A. Specifically, there is no case, to my knowledge, in the Port of Portland where we have had a rejection that was necessary to take before a port committee. To my knowledge that has never arisen. The agreement also provides that the man shall perform his duties and conduct himself in certain manners, and when he doesn't do that there is no necessity of a port committee meeting. We just simply handle that within the framework of the union itself.

Q. Did the steamship companies negotiate with you on these questions of disputes and grievances that might otherwise have been settled in the Port Committee if an agreement had not been reached?

A. Yes.

Q. Mr. Atkins, could you outline to the Court the difference that has prevailed, if any, in the practice as you have observed it during peace times and after the war?

A. There has been very little changes; none in regards to the contracts. The only changes that have been brought about from time to time by the emergency was merely war time emergency raises in salaries, and bonus areas designated, and so on. The actual agreement itself was never touched.

Q. It appears on its face that it was amended on October 1st, 1944. Do you know what change was accomplished by the amendment?

A. That was merely changes after the bonus areas were [fol. 112] changed. The various rates in those areas were changed. You will find in the back of the agreement references to such changes.

The Court: You mean by bonus areas different parts of the world in which the ships sailed where the danger was greater?

A. That is correct.

The Court: Greater than in other spots?

A. Yes. And those areas did vary. And then there was the question, too, of handling cargoes in outlying emergency ports in the war areas, or fighting areas, where longshoremen were not available or they did not have the ordinary soldier gangs, you know—whatever they called them there—labor gangs and labor battalions in the army or the Seabees were not available. Then you will find slight references in the back there as to rate of pay in overtime and the conditions under which the men would work. Those were included in the amendments.

Q. Now, do you know of your own knowledge whether or not those amendments were negotiated between the steamship companies and the S. U. P.?

A. In all cases, as far as I know, the steamship companies, acting for the agreement, negotiated all of those changes.

Q. Now, let's turn back to the first of this contract, Mr. Atkins, and I will ask you if prior to the war the S.U.P. furnished competent and satisfactory employees to the steamship companies in the same manner that you described before?

A. Yes, we at all times made attempts to furnish competent—

Q. Did you do the same thing after the war?

A. Yes.

Q. And has the procedure changed in any respect as to that particular?

A. No, it has never changed.

Q. Now, as to the right of rejection on the part of the steamship companies, has that changed in any respect?

A. No, there is nothing changed in that respect regarding the employment or service aboard the ships.

[col. 113] Q. As to the settlement of disputes by the Port Committee, has that changed in any particular?

A. None whatever.

Q. Has there been any change within your knowledge of Section 1 of the contract, which provides: "The employers agree to recognize the Sailors' Union of the Pacific as the

representative for the purpose of collective bargaining of their unlicensed personnel"? I will ask you if in your knowledge there has been any change in that particular?

A. None.

The Court: The witness says that there has been no change in any of the essential particulars. Is that correct?

A. That is correct, your Honor.

The Court: The situation during the war was precisely the same in all essential particulars as it was prior to the war?

A. Exactly, sir.

The Court: A few little changes made on rate of pay and bonuses, and such as that, due to the increased danger arising out of the war?

A. That is right, sir.

By Mr. Peterson:

Q. Now Mr. Atkins, are you familiar with vessels that have been operated under what is known as a General Agency Agreement, commonly known as GAA 4-4-42?

A. Well, yes.

Q. You are familiar with that?

A. I am not familiar with the details behind that part of the directive, because I imagine it did not fall within our scope of operations.

Q. What I am asking you, however, has the union, within your knowledge, furnished employees, sailors, for vessels that are being operated under what is known as General Agency Agreement, GAA 4-4-42?

A. I believe that covers practically all the ships that we furnished men to.

[fol. 114] Q. Now, when you referred to steamship companies, has that included what are called general agents?

A. They all fall within that scope, I believe.

Q. Now, this contract that you have identified here covers generally wages, hours and working conditions, and those wages, hours, and working conditions as prescribed in this agreement are the terms of the contract that you have tried to see that the union lives up to and that the various steamship companies live up to that are signatories to this agreement: is that correct?

A. That is correct.

The Court: Does that not get us right back to the General Agency Agreement now?

Mr. Peterson: Leads us back to the General Agency Agreement, yes.

The Court: Under the General Agency Agreement the general agent is specifically required to procure the personnel for the ship according to the methods followed before, and this contract here is the method that has been followed, so that the fact that they do do that is entirely consistent with the terms of the General Agency Agreement. The steamship company was required to do it. One of its duties was to go to the Sailors' Union of the Pacific and get these men. In other words, I think this all is determined entirely by the contract. The two contracts read together simply carry out what the witness is testifying to orally. I still insist that this Court must determine this question from the writings and not from the oral testimony. All right. Make up your record.

Mr. Peterson: You may take the witness.

Cross-examination.

By Mr. Wood:

Q. Mr. Atkins, did you understand that all ships during [fol. 115] the war had been operated under general agency agreements?

A. No, I couldn't positively state that all vessels were.

Q. I think you said that all the vessels to which you supplied the crews—

A. That is correct, as far as I know.

Q. You don't really know, do you?

A. Well—

Q. There may be some that are time-chartered vessels?

A. Yes.

Q. You would not know?

A. Yes, there are those exceptions when it is possible a ship might have been operated out from under it. That I would have no way of knowing. But they did fall within the scope of the agreement.

Q. Are you present when the articles are signed?

A. In most cases.

Q. Have you ever been present when the articles were signed of a time-chartered vessel?

A. Yes.

Q. Were you working with one of the shipbuilding companies for a while?

A. I was with Oregon Ship for a time.

Q. In the intervening period?

A. Yes.

Q. Now, you were with the Shepard Steamship Company, then, from '39 to '41?

A. Yes.

Q. Will you tell me briefly in what trade or route the Shepard Steamship Company operated vessels?

A. Intercoastal.

Q. And by Intercoastal what do you mean?

A. From the Atlantic to the Pacific and vice versa.

Q. Were they a common carrier?

A. Yes.

Q. With a common carrier certificate from the Interstate Commerce Commission?

A. Correct.

Q. And who owned the ships that they operated?

A. The Shepard Steamship Company or the Shepard-Morse Lumber Company. The technical point there, I mean—

Q. You mean the Shepard & Morse Lumber Company. Is that an affiliated company?

A. Yes, that is the same.

Q. And who solicited the cargo for those trips? I don't mean who generally. I mean was it done by the Shepard Steamship Company or their employees?

A. Yes, or their agents.

Q. Who received the earnings of the vessels?

[fol. 136] A. The Shepard Steamship Company.

Q. Who bore the losses of the vessels?

A. The Shepard Steamship Company.

Q. Did Shepard Steamship Company operate any vessels which it did not own during those years, but which it operated as an agent for the United States Government?

A. Not for the government, no.

Q. About how many vessels did Shepard Steamship Company have?

A. Well, they averaged about five. They owned five of their own and filled in with other ships at times.

Q. Where would they obtain the other ships?

A. Just on occasion by charters from other owners.

Q. Did you notice at the top of the articles who it specifies as owner in the case of a time-chartered vessel, or have you never looked?

A. Oh, yes; I am charged with looking, if there is any reason to believe that there is a doubt. However, in most cases there was none, because the Commissioner's office in this port, the United States Shipping Commissioner's office, functioned along certain lines that way and defined the policy of that office. And none of the articles changed in heading unless we were all notified. Very, very seldom anything like that happened.

Q. Do you know it to be a fact that if you had a time-chartered ship, a vessel owned by a private steamship company and time-chartered to the Government, the articles [fol. 116] would show the name of the owner of the vessel as being a private steamship company, would they not?

A. I am not certain as to whether they would in all cases or not, any more than the offices of the steamship company might be certified the same as merely offices of the Government during the war time period. However, that could be ascertained very easily from the Shipping Commissioner.

Q. Yes. Now, the date of that union agreement is something November, 1941, is it not?

A. Yes. There is two dates on the present one, but the original date is—the '41 date is the one on the—

Q. I will hand you here a document entitled "Agreement between the Sailors' Union of the Pacific and Steamship Companies in the Intercoastal and Offshore Trade and the Alaska Lines," dated November 4, 1941. Will you examine that.

The Court: Is this the original?

Mr. Wood: Yes, your Honor. It is a copy of the original.

• • • • • • • • • • •

The Witness: I assume now, because of the fact, your Honor this is the usual form that I find in the hands of company agents, regardless of who they are. It is very seldom—in fact, I think we are the only ones that put out the agreements in that book form.

By Mr. Wood:

Q. That Exhibit No. 1 is published by the union, is it not?

A. Yes.

The Court: You don't question that?

Mr. Hicks: No, as long as it is—that is another copy of the same contract.

The Court: Very well, it will be admitted that this is a true copy of the contract issued November, 1941.

Mr. Wood: I offer it in evidence
[fol. 117] Mr. Hicks: No objection.

The Court: It will be admitted.

Mr. Wood: Maybe it will save time if at this time we can offer Memorandum of Rule Adopted by the Port Committee of the Pacific American Shipowners Association and the Sailors' Union of the Pacific to Cover Continuous Cargo Work on vessels in Alaskan Ports, Subject to Approval of War Shipping Administration, which is dated January 30, 1943.

Mr. Hicks: We have no objection to either that exhibit or the other that counsel is about to offer; but I would suggest they be tied together.

Mr. Wood: I would just as soon tie them together.

The Court: All right.

Mr. Wood: They are amendments.

The Court: They are amendments to the contract of '41?

Mr. Wood: Yes. I don't know that they constitute all the amendments, but they are typical of the amendments.

The Court: Very well. They will be all admitted as one exhibit without objection.

(The copy of Agreement above referred to, together with the document entitled "Memorandum of Rule Adopted by the Port Committee" etc., was thereupon received in evidence as Defendant's Exhibit A.)

By Mr. Wood:

Q. Mr. Atkins, it is the master of a ship, is it not, who has the responsibility of rejecting a man that you might send down?

A. Well, the master is the supreme authority on the vessel, it is true. But, however, any mate on deck—I am speaking now in my department—

Q. Yes.

A. —any mate, whether it is the third, second or first mate, who has been left in charge, has the same authority while he is solely in charge. He is merely fulfilling his orders
[fol. 118] and acting as—

Q. He is acting on behalf of the master?

A. On behalf of the master for the vessel.

Q. If a man was sent by your union office and came down to the ship and turned out to not be fitted for the job and he was sent back with a request for another man, that would be the master's responsibility, would it?

A. It would be, yes.

The Court: Was there any difference in that situation before the war and after the war?

A. None whatever, your Honor.

The Court: In other words, it has always been the function of the master to control that situation?

A. That is correct, legally under the law.

By Mr. Wood:

Q: Mr. Atkins, there is a strike at the present time, is there not, on the waterfront of the Seamen's Union? I mean you are not now supplying crews to any of the vessels, are you?

A. The Sailors' Union of the Pacific, as far as I know, officially ended their strike at twelve midnight last night.

Q. I am glad to hear that. But during the past few days there has been a strike?

A. There has for eight days, perhaps.

Mr. Peterson: I object to that, your Honor, as outside the scope of the direct examination.

Mr. Wood: No, because I want to ask who that strike has been against.

Mr. Peterson: Of what importance is that on this issue?

By Mr. Wood:

A. Who has the recent strike been against?

The Court: There might be a difference of opinion on that.

[fol. 119] Mr. Peterson: Well, I object to the form of it, your Honor.

The Court: That is calling for a conclusion of the witness as to who it is against. They are striking for higher wages, I understand. He may say it was against the steamship companies but I have read in the paper that it was against the Government.

By Mr. Wood:

Q. Well, who set the scale of wages for which the union is striking? Was it not the War Shipping Administration?

A. The way you put it it is very difficult to answer.

Q. Do you know? Maybe you don't know.

A. Yes, I do know.

Q. Was it not the War Shipping Administration?

A. No.

Q. —that approved the scale of wages, and which for the time being was not approved by the War Stabilization Board?

A. The War Shipping Administration did approve the contract, the new contract, that was negotiated under the Labor Act by the Pacific American Steamship Owners Association and the Sailors' Union of the Pacific. Then, acting on behalf of the Government, since the emergency has not been declared off, the War Shipping Administration underwrote that contract for the Government insofar as it could. It developed that they couldn't.

Q. That has been the way with all wage increases during the war, has it not, the War Shipping Administration has underwritten them?

A. That has followed throughout all industry pertaining to the war effort.

Q. You have not actually taken part in any of these negotiations, have you, with the Pacific American Shipowners Association?

A. The last time I was on the negotiating committee was in 1938.

Mr. Wood: That is all.

[fol. 120] Redirect examination.

By Mr. Peterson:

Q: May I ask you a couple of further questions, Mr. Atkins. On vessels so far as the union organization is concerned there is first the Sailors' Union of the Pacific, which embraces all unlicensed personnel, unlicensed deck personnel. Am I correct in that statement?

A. That is correct.

Q. Now, is there a union that has jurisdiction over the galley crew?

A. Yes, in the Pacific American Steamship Owners Association, the old West Coast Marine Cooks and Stewards.

Q. The Marine Cooks and Stewards is the union that has jurisdiction over the—

Mr. Wood: May I make a suggestion to try to shorten the record? We are willing to stipulate that there were similar agreements similar labor agreements, entered into between the Pacific American Shipowners Association and the Marine Cooks and Stewards Union, and the Marine Firemen, Oilers, Watertenders and Wipers Union, and that the Shepard Steamship Company had subscribed to the Pacific American Shipowners Association; that these similar agreements were also entered into on about the same date. ***

By Mr. Peterson:

Q. Mr. Atkins, to complete my query, there is one division called the Marine Cooks and Stewards, and there is a contract in existence between the Marine Cooks and Stewards and the various steamship companies. Do you know that to be a fact?

A. Oh, definitely. They are operating under it every day.

Q. Now, in addition to that, are there four other unions that have contracts with the steamship companies in the operation of vessels?

A. There are the Masters, Mates and Pilots, and the M.E.B.A.

[fol. 121] Q. The M.E.B.A.?

A. That is the Marine Engineers Beneficial Association.

Q. Which embraces the engineers on board the vessels?

A. Licensed engineers on board the ship.

Q. And then there is—

A. Then there is the A.R.T.A. or the A.C.A. I believe they renamed themselves the American Communications Association.

Q. They are the telegraphers?

A. Wireless operators.

Q. Radio operators on board the vessels?

A. Of Pacific American.

Q. And then there are the Marine Firemen, Oilers and Watertenders?

A. Yes.

Q. And then the Masters, Mates and Pilots; is that correct?

A. That is correct.

The Court: Are you willing to admit all these in evidence?

Mr. Wood: No, I would rather not, your Honor. The thing is they incorporate amendments without showing that those amendments have been made and signed by the War Shipping Administration.

The Court: They are not official documents. In the face of a technical objection, they are not admissible.

Mr. Hicks: They have not really officially been offered yet, your Honor. Maybe counsel would permit their admission upon the basis that these are the contracts which were placed aboard the vessel.

Mr. Wood: Who would place them aboard a vessel?

By Mr. Peterson:

Q. I will ask you, then, if within your knowledge there are contracts with other unions?

A. Oh, very definitely.

Q. Now, do you know whether a copy of the printed S. U. P. agreement that has been marked and introduced [fol. 122] in evidence here is placed on board every vessel?

A. It is.

Q. Do you know whether or not that is true as to the other contracts with other unions?

A. I have very seldom ever visited a vessel where there were not, and then only in the case when they were not available at the time. It is true enough we have been short of printed matter ourselves in certain instances.

Q. Did the union delegates under the contract have copies of the contract when they went on board a vessel or were selected as delegates?

A. If they don't they usually secure one before the vessel leaves.

Mr. Peterson: Yes. You may take the witness.

Recross-examination.

By Mr. Wood:

Q. When you say they were put aboard the vessel, you mean they were given to the union delegate who was the crew's delegate on the vessel. Isn't that what you mean?

A. That is correct. That is another part of my job, to see that he does have that.

Q. When you say they were placed on board the vessel, you mean you would see that the union delegate in the crew had a copy of that in his possession?

A. Yes.

The Court: The plaintiff in this case was a member of the Sailors' Union of the Pacific, wasn't he?

Mr. Hicks: Yes.

By Mr. Wood:

Q. When you say placed aboard the vessel you mean it [fol. 123] was given to the union delegate. Who gave it to the union delegate?

A. Well, in many cases I do, or whatever other official happens to visit the ship.

Q. You mean union official?

A. Yes.

Q. Yes.

The Court: You don't take care of these other unions or see that they get a copy, do you?

A. Not unless I have been asked as a particular favor by their officials, being going to the ship, you know, where perhaps they were not able to make it at the time.

The Court: But it was not part of your business; you just did it as an accommodation?

A. Just as an accommodation.

The Court: Do you know of your own personal knowledge whether on all these ships other—I am going to call them business agents or representatives for each union went on and delivered one of these books? Do you know of your own personal knowledge, or is it just a matter of practice that you are testifying to?

A. No, from both, you Honor. It is a matter of practice, and, in fact, other unions charge their officials the same as mine does me, and only in cases where there was a shortage, or the man might forget to place it in his bag, in those cases the delegates from the various vessels usually go up to their own union and secure the agreements. They would be foolish to sail without it.

Mr. Wood: I have no further questions.

Mr. Peterson: That is all, Mr. Atkins.

(Witness excused.)

FRED W. FINK, the plaintiff herein, was thereupon produced as a witness in his own behalf and, having been first [fol. 124] duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hicks:

Q. Mr. Fink, you are the plaintiff in this case?

A. Yes, sir.

Q. Did you ship aboard the "Steamship George Davidson" on or about the 12th day of June, 1943?

A. Yes, sir.

Q. How did you obtain your employment in that connection?

A. Through the Sailors' Union of the Pacific.

Q. Did you obtain membership in that organization before securing employment?

A. Yes sir.

Q. Were you hired out of the Union Hall?

A. Yes, sir.

Q. You signed the articles on the 8th day of June, 1943. Right?

A. I believe that is right.

Q. And you did become a member of the crew on that vessel?

A. Yes.

Q. At the time you went aboard or in the course of the voyage were you shown or did you read a copy of the union agreement that was aboard the vessel? By that I refer to the union agreement which was in effect at that time between the Sailors' Union of the Pacific and the Shepard Steamship Company.

A. There was a union agreement aboard the ship. I had seen it, but I didn't read it thoroughly.

Q. You didn't read it?

A. No.

Q. Where did you sail from?

A. From Portland, Oregon.

Q. And just very briefly into what waters?

[fol. 125] A. We went from Portland to San Pedro, from San Pedro to Hobart, Tasmania, and from Hobart to Bombay, from Bombay to Cochin, India, and from Cochin to Colombo, Ceylon, and from Colombo we went to Freemantle,

Australia, from Freemantle to Panama and from Panama to New York, and from New York to Baltimore.

Q. While engaged in that voyage did you sustain certain injuries which are more specifically alleged in the complaint on file in this case?

A. Yes, sir.

Q. Mr. Fink, did you come to know the master of the vessel?

A. Yes.

Q. Did you have conversations with him from time to time?

A. Yes.

Q. Was that true likewise of other officers and licensed personnel aboard the vessel?

A. Yes, sir. * * *

Q. In the course of your relationships on this voyage and otherwise did you have any contact directly or indirectly with anyone representing the War Shipping Administration of the United States?

A. No, sir.

Q. By whom were you paid?

A. I was paid by the captain of the vessel.

Q. In what manner?

A. In cash.

Q. Were any checks ever furnished you?

A. Not me.

Q. Were any checks furnished your wife, to your knowledge, in the form of allotments?

A. I understand she received her allotment check—allotment by check.

[fol. 126] (A document entitled "Seaman's Allotment Note" was thereupon marked Plaintiff's Exhibit 2 for identification; and statement of wages and overtime was thereupon marked Plaintiff's Exhibit 3 for identification.)

Mr. Hicks: It has been agreed heretofore that this may be received in evidence and that it is what it purports to be.

The Court: That is a copy of the allotment slip.

Mr. Wood: Yes, no objection.

(The allotment slip above referred to was thereupon received in evidence as Plaintiff's Exhibit 2.)

Mr. Hicks: And the same will be true of Plaintiff's Exhibit 3. It has been stipulated and agreed that this may be received in evidence.

(The document referred to was thereupon received in evidence as Plaintiff's Exhibit 3.)

The Court: Now, there can't be any question about these allotment checks. Were they sent out by the Maritime Commission or by the Shepard Steamship Company?

Mr. Wood: They are sent out by the Shepard Steamship Company out of a special account of moneys supplied by the War Shipping Administration.

The Court: Yes. The War Shipping Administration furnished the money, but the Shepard Steamship Company sent their checks on this account to the wife?

Mr. Wood: Yes, that is right.

By Mr. Hicks:

Q. Mr. Fink, did this ship, the "George Davidson," fly a flag carrying any names or a name?

[fol. 127] A. No.

Q. Did the name Shepard Steamship Company appear at any place on the vessel, either by way of a flag or other designation?

A. No.

Q. Were any communications of any kind which you received in respect to your employment signed by any firm or person other than the Shepard Steamship Company?

A. No.

Mr. Wood: You say "Were any communications he received signed by others." Did he receive any communications?

By Mr. Hicks:

A. Did you receive any communications or have any documents handed you in respect to your work aboard that vessel which bore a designation other than Shepard Steamship Company?

A. No.

The Court: The question is did you ever receive any communications or documents during your service?

A. No.

Mr. Wood: I object to any oral testimony about written communications.

The Court: He says he never received any documents or anything of that kind.

By Mr. Hicks:

Q. You did receive Exhibit No. 3, did you or did you not?

A. Yes, I received that when we paid off.

Q. Now, my question was directed as to whether you received other documents of any form which bore the designation Shepard Steamship Company.

A. I don't know whether my discharge has the Shepard Steamship Company signature or not to it.

[fol. 128] Q. When you were notified through the hiring hall that you were to become a member of the crew of the "George Davidson" were you told by anyone as to what firm was operating that ship?

A. No.

Q. You were not told the name of the ship?

A. Not until after we had signed the articles.

Q. You didn't know the name of the ship until after that?

A. Well, we knew the name of the ship, but we didn't know the name of the company that was operating the ship.

Q. Have you at any time seen a copy of an agreement which is known as GAA 4-4-42, the General Agency Agreement?

A. No, I have never seen that.

Q. Did you see that before you shipped?

A. No.

Q. Have you seen it at any time?

A. No.

Q. Had you ever heard of such an agreement?

A. No, I had never heard of it.

Mr. Hicks: That is all.

Cross-examination.

By Mr. Wood:

Q. Mr. Fink, do you have your discharge from the vessel, your discharge slip?

A. I don't have it with me. I believe Mr. Hicks has it.

Mr. Peterson: Here it is, or a copy of it (handing document to counsel.)

Mr. Wood: Just to save time, I will offer his discharge in evidence. It shows that it is signed only by the master of the vessel, and does not have the name of the Shepard Steamship Company any place on it.

[fol. 129] Mr. Hicks: We have no objection to it being received.

The Court: It will be admitted.

(The certificate of discharge above referred to, so offered, was thereupon received in evidence as Defendant's Exhibit B.)

By Mr. Wood:

Q. When you were sent down to the ship by the union did you know it was one of the government owned ships?

A. No. *

Mr. Hicks: We will stipulate with counsel, if that is what he wants, that there was a suit pending in the United States District Court heretofore under the Suits in Admiralty Act, and that case was dismissed without prejudice; if that is what you want, we will so stipulate.

Mr. Wood: On account of the same matters and things alleged in this action.

Mr. Hicks: The same injuries involved, yes.

Mr. Wood: I think that stipulation is satisfactory.

The Court: All right.

Mr. Wood: Maybe it will shorten the matter. I will ask if you will make the same stipulation, that likewise a claim against The United States of America was filed pursuant to—

Mr. Hicks: We will admit that at one time, pursuant to the terms of Public Law 17, the so-called Clarification Act, a claim was filed and that thereafter a suit was filed against The United States in the United States District Court. We will stipulate to that effect, denying meanwhile that it has any bearing whatsoever upon any issue here.

Mr. Wood: But you will stipulate that a claim was filed before the War Shipping Administration, Washington, D. C., in the matter of the claim of Fred W. Fink against the [fol. 130] War Shipping Administration, "SS George Davidson," and Shepard Steamship Company, a corporation, said claim being for the injuries received on the "George Davidson" which are the subject of this action, and the said claim being filed pursuant to Public Law 17 and the applicable general orders of the War Shipping Administration?

Mr. Hicks: We will stipulate to that effect, and denying its relevancy here.

The Court: All right.

Mr. Wood: Satisfactory. That is all, Mr. Fink. Thank you.

(Witness excused.)

Mr. Hicks: We desire at this time, your Honor, to offer in evidence a copy of the Agency Agreement designated as GAA-4-4-42. • • •

Mr. Wood: I am further willing — stipulate, if counsel desires, that the vessel "George Davidson" was allocated to the defendant Shepard Steamship Company pursuant to the terms of such general agency agreement.

Mr. Hicks: We will so stipulate.

(The copy of document entitled "GAA 4-4-42, Contract WSA-215," so offered, was thereupon received in evidence and marked Plaintiff's Exhibit 4.)

Mr. Hicks: I desire at this time to offer in evidence a contract between the Pacific American Shipowners Association and National Marine Engineers Beneficial Association, CIO. • • •

(The agreement above referred to, so offered and received, was thereupon marked Plaintiff's Exhibit 5.) • • •

Mr. Hicks: I believe we rest at this time. We may have a few tag ends to offer later, your Honor, but at this stage of the case we will rest.

The Court: Very well.

[fol. 131] Mr. Wood: May I have the remaining exhibits?

Mr. Hicks: Your Honor, if I may intrude here, there were certain agreements which it was agreed might be received in evidence when we could establish fully the accuracy of copies, after counsel had examined them, and so forth. I think probably the agreements to which reference is made should be stated in the record so there will be no confusion about them.

The Court: Very well. • • •

Mr. Hicks: Exhibit 9 for identification being an agreement between the Marine Cooks and Stewards' Association of the Pacific Coast, C. I. O., and Steamship Companies in the Intercoastal and Offshore Trade," etc. • • •

(The agreement last referred to was thereupon marked Plaintiff's Exhibit 9 for identification.)

Mr. Hicks: In respect to those agreements we are to supply copies which counsel shall approve as to their accuracy.

The Court: Very well.

Mr. Hicks: Or otherwise originals.

The Court: All right.

Mr. Wood: In regard to what counsel just said, I see there are some of those which were to be received in evidence when authenticated copies are supplied, and I think there may have been more just now marked, but I think the record will show, or the previous record, and discussion on this.

The Court: Very well.

Mr. Wood: The defendant will now offer War Shipping Administration Operations Regulation No. 1, dated in Washington May 25, 1942 which for convenient reference may be found as Defendant's Exhibit 25 in the transcript of record in the case of Hust against Moore-McCormack Lines, Inc., in the United States Supreme Court, commencing at page 164 of said transcript, and ending at page 173 of said transcript.

The Court: It will be admitted, and it may be understood that a copy may be made and substituted for this transcript.

Mr. Hicks: No objection.

Mr. Wood: Just to make the record clear, I will identify it at this point as being the War Shipping Administration's Operations Regulation No. 1, in which they attach various statements of policy entered into between the War Shipping Administration and the various unions, together with some clarifying correspondence between the War Shipping Administration and union officials.

The Court: You offer all of that as the exhibit, not only their own statement, but the statement of policy and other exhibits?

Mr. Wood: Yes.

The Court: Very well. It will all be admitted, with the understanding that copies will be made from this original transcript.

Mr. Wood: Yes.

(The copy of the document above referred to, so offered, was thereupon received in evidence as Defendant's Exhibit C.)

Mr. Wood: The defendant will now offer in evidence War Shipping Administration's General Order No. 21, which is codified in the War Shipping Administration's general orders as General Order No. 21, Part 306, General Agents and Agents, Chapter IV, War Shipping Administration, Title 46—Shipping. I believe it is only necessary to offer the first page of this General Order No. 21 and Sections 306.46, headed "Berth Sub-Agent Service Agreement," together with Form BSA, approved 9/22/42 and attached thereto, [fol. 133] and Section 306.47, "Appointment of Berth Sub-Agents," and I will ask the court reporter to have copied for us those stated pages of this General Order No. 21.

Mr. Hicks: We do not object to the identification or accuracy of the material that counsel now offers. Our objections is, however, that it is incompetent and irrelevant and without bearing upon any issue in the case.

The Court: I will admit it subject to the objection.

Mr. Hicks: No foundation laid. • • •

Mr. Hicks: As I understand it, you received it over my objection.

The Court: Yes. You are willing that he should just take the excerpts out of there that he offered.

Mr. Hicks: Yes, your Honor.

The Court: Very well.

(The excerpts from General Order No. 21 above referred to were thereupon received in evidence as Defendant's Exhibit D.) • • •

Mr. Wood: We will ask the court reporter to copy the correspondence which is the appendix to this brief.

(The appendix to the brief above referred to, so offered, was thereupon received in evidence as Defendant's Exhibit E.)

Mr. Wood: Now, I want to also offer in evidence, although I do not have either the original or a copy with me right here at this time, and I want to have received in evidence the shipping articles from the office of the United States Shipping Commissioner, which were signed by the master of the vessel and signed by Mr. Fred Fink, covering the engagement for this particular voyage.

The Court: I think they are material and they will be received.

Mr. Hicks: We have no objection to counsel furnishing a copy of all or a part of the articles by photostatic copy or otherwise.

{fol. 134] Mr. Wood: I think we can get a photostatic copy.

The Court: Very well. They will be admitted.

(The copy of the shipping articles above referred to, to be later furnished by counsel, was thereupon received in evidence as Defendant's Exhibit F.)

The Court: That is the shipping articles?

Mr. Wood: Yes, from the office of the United States Commissioner. We won't have any trouble in agreeing to that.

The Court: Very well.

Mr. Wood: Now I would like to call Mr. Sanders.

EARL SANDERS was thereupon produced as a witness in behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wood:

Q. Where do you reside, Mr. Sanders?

A. In San Francisco.

Q. What is your occupation?

A. I am the California operating manager for Shepard Steamship Company.

Q. At the present time are you acting in the capacity, although without the official title, of manager in the Pacific Northwest?

A. Yes.

Q. How long have you been with the Shepard Steamship Company?

A. Well, I was about two years, from '39 to '41, and then again from '42, the summer of '42, until the present time.

Q. What did you do in the intervening period?

A. Well, I worked at various things, both here and up in {fol. 135] Seattle, in steamship work, a number of things.

Mr. Wood: I think that is certainly true. Of course, the government doesn't always act the way private people do, and I don't think Mr. Settle says that the War Shipping didn't have power to go and do it directly, but as their usual procedure, the way they did it, they would tell the agent what they wanted done.

The Witness: I can't say they never did do it, your Honor. It is the policy to go through channels, the same as it is in the Army.

[fol. 155] By Mr. Wood:

A. Now, what do you do generally with regard to keeping track of the vessels when they are in port?

A. Well, we have a department that keeps track of the arrivals, all arrivals in port, and all departures each day, and this report goes on my desk and the others, and shows the name of the agent, the dock, and by that report we keep in contact with the agents. I don't think there are very many that they don't call us every day regarding some of them, some part of the operation of these vessels.

Q. Who has authority to make decisions when problems like that arise?

A. Well, we are supposed to make decisions in regard to our experience, based on our previous steamship experience.

Q. You say based on your previous steamship experience. Have you had previous steamship experience, Mr. Settle?

A. What is that?

Q. Have you had previous steamship experience?

Q. A. Oh, about forty years.

Q. And is that also true of other employees of the War Shipping Administration in similar capacities?

A. Yes, all of our employees have been engaged by reason of their experience, the M & R and the auditors.

The Court: I am glad to hear that the government, in creating a few, at least, of the innumerable bureaus it created, has taken into account experience as a qualification for appointment. The War Shipping Administration seems to be an exception to the general rule.

A. If I might interrupt, I think this is—when you stop and consider that it was a big job to handle maybe forty or fifty ships by one company before the war, you can imagine what a job it is to handle more ships than there was in the entire world during the war.

Q. And those ships were operated by them for their own account?

A. Yes.

By Mr. Wood:

Q. Did Shepard Steamship Company operate in any foreign services or to any foreign ports?

A. No, they did not operate on their own. On one or two occasions they time chartered other vessels into another service, or someone else's service; where they just handled the vessel.

Q. With another private steamship Company?

A. Yes; the Grace Line, for instance, one occasion that I know of.

Q. Did they ever operate vessels to Australia or the far Pacific or to India, to your knowledge?

A. Not to my knowledge, sir, during the time—

Q. Now, are you familiar with the vessel "George Davidson"?

A. Yes.

Q. It has already been stipulated that that vessel was allocated to the Shepard Steamship Company under a [fol. 137] general agency agreement. Do you know who owned that vessel?

A. The United States Government.

Q. Do you know where the vessel was built?

A. Oregon Ship.

Q. Do you know who built it?

A. Well, it was built by Oregon Shipbuilding Corporation for the account of the United States Maritime Commission.

Q. Now, I would like to take you briefly over the services that you rendered in connection with that particular vessel from the time that the vessel was completed until it made its voyage. In the first place, would the services for that vessel be rather typical of the services that you generally render as general agent?

A. Yes.

Q. For other government owned vessels?

A. Yes.

By Mr. Wood:

Q. Now Mr. Sanders, what would be one of the first tasks of a general agent in connection with a newly built ship allocated to it?

A. Well, one of the first things would be to get a master of the ship assigned to it.

Q. How would you get a master?

A. Well, we would be supposed to know some of them. That is what they have us for. But otherwise we would contact the Masters, Mates and Pilots Association. Or in a case of too many shortages we went to the War Shipping Administration, through their Recruitment and Manning organization.

Q. Can you tell us just briefly, if you know, what the RMO of the War Shipping Administration was?

[fol. 138] A. Recruitment and Manning organization. That is the name of it.

The Court: They conducted schools, didn't they?

A. They had recruitment organizations scattered throughout the country. They had, I believe, a school for raw recruits at Catalina Island, and an upgrading school for officers at Alameda, that I know of.

Q. Will you tell also something of the pools maintained by RMO in foreign areas.

A. All I know is that in some cases when we had shortages on ships in foreign areas—forward areas—and men would get off and they would come back with the full complement, and we would find out where they got them; they got them from pools of the War Shipping Administration. But the details of foreign areas we didn't know very well.

Mr. Wood: Now I will hand this form to the witness. I will ask to have it marked for identification so we can refer to it.

(The form referred to, entitled "War Shipping Administration, Division of Operations, Service Record," was thereupon marked Defendant's Exhibit G for identification.)

Q. Referring to Defendant's Exhibit G for identification, was that form used in connection with the procurement of a master?

A. Correct.

Q. Will you state what the form was used for.

A. This is a service record used for all licensed officers,

under instructions of the War Shipping Administration, to present their name, with all the data required on here, such as education; and so on, issue and license numbers, and on the back the particulars of previous sea service, which [fol. 139] was sent then to the War Shipping Administration for their approval.

Q. Now, you would have a master or other officer fill that out, would you, Mr. Sanders?

A. Correct.

Q. And then who in the War Shipping Administration would you send that to?

A. In this Coast I think they all at all times went to the District Marine Superintendent in San Francisco.

Q. That is Mr. George Eggers. He was the War Shipping District Marine Superintendent?

A. Yes.

Q. Then would you receive his approval of the engagement of the master?

A. Yes.

Q. Following that. And was the same procedure also followed with respect to other licensed officers?

A. Yes.

Q. The chief engineer, chief mate—

A. Yes.

Mr. Wood: I offer that form in evidence.

Mr. Hicks: Your Honor, I don't think we have any objection to this document.

The Court: Very well. It will be admitted, then, without objection. It is not a part of your offer of proof, but is in the record.

(The blank form above referred to, so offered, was thereupon received in evidence as Defendant's Exhibit G.)

By Mr. Wood:

Q. What would be the procedure, Mr. Sanders, in respect to a master who had previously filled out one of these blanks on another ship, with respect to employment on another [fol. 140] ship, when he sought employment on a new ship? Would he have to fill out this form over again?

A. Well, not necessarily. They have a transfer form, a much shorter form, simply stating that he had—well, you ask him if he has filled out—determine whether he has made one out for any agent on any War Shipping vessel. If he has, the requirements are simply then to make one of these transfer forms stating what his last employment was, what vessel it was, the name of the vessel, and to which vessel he is now going. That is just a statistical record.

Q. And that would be true if he had previously served on a vessel allocated to some other general agent?

A. Yes.

Q. Of the War Shipping Administration?

A. Yes.

The Court: Of course, they already have his statement of who he is and what he is, and all they would have to know then is if he is the same fellow.

Mr. Wood: That is true, but I wanted to make it clear.

The Court: This transfer blank would be submitted to the War Shipping Administration for their approval just the same, wouldn't it?

A. Well, they would serve this purpose: That if in the course of events—they apparently had many personnel problems, and they would find a man that they determined to be incompetent, or for some reason that they didn't want him hired—didn't want to hire him as a master, possibly would use him as a mate. And when this transfer form came through—he may have been ashore for six months or two months or something, and when it came to their attention [fol. 141] they could advise us not to use him because of something that happened in the meantime.

The Court: Then you would go and get another one and submit to them?

A. Yes. We never have had that happen, but that is the purpose of it.

The Court: The use of the transfer form was just because he had already filled out an application as to what his education was, what his service had been, and such as that, and as I understand it would be a mere idle gesture to go and fill the same thing out again. He would just say, "Well, I have served on a boat for the McCormack people," we will say, on a given ship. "Now I want to transfer over to so and so ship." And that is submitted to the War Ship-

ping Administration as to whether to approve him for this ship or not; isn't that correct?

A. Yes, it is supposed to be approved.

Mr. Wood: The significance of it from my point of view is that if he has worked for the War Shipping Administration, even on another agent's ship, my contention is it shows that he is still working for the War Shipping Administration all the time and he doesn't have to make out a new form.

The Court: The way I gather it is this: If he makes out one form and is accepted by the War Shipping Administration as a master of a ship, and then he finishes that tour of duty and he goes on another ship, why should he make out another report to the War Shipping Administration or go to them for approval, if he has already been their employee and they have his record and everything. They have employed him once. Why not transfer him to another ship just ipso facto without any trouble.

Mr. Wood: That is exactly it.

[fol. 142] The Court: I think that that situation disputes your contention, because if a man goes into the Navy he becomes a member of the Navy. Now, every time he changes boats, why, they don't make him a new member of the navy.

Mr. Wood: That is right, because he has always worked for the United States Government.

The Court: A man's name is submitted to the War Shipping Administration for approval as a master under this agency agreement, and they approve him as all right to take that ship and go. Now, if he were owned by the United States Government and was their employee, and all of that, they why, when they want to send him to another ship, have to go through the same rigmarole?

Mr. Wood: They just have a transfer slip.

Mr. Hicks: Your Honor, the contract itself provides for that, inasmuch as the master must first be selected and approved by the general agent, and then only after the general agent has selected him may he be approved.

The Court: Anyway, it is a kind of double edged sword you are getting into right now.

Mr. Wood: Well, I think it is good for our side. I think our side is sharper.

The Court: All right.

By Mr. Wood:

Q. Now, having engaged the officers and the master, what are the next duties of a general agent with respect to a new ship? What else do you do now with the new ship?

A. Well, of course, this all overlaps.

Q. It all overlaps; you don't do everything simultaneously, but what other duties do you perform?

A. We work in conjunction with the building yard to determine, if we can, when they are going to deliver it, and [fol. 143] how completely they are going to deliver it. Then another question is as to the minimum stores they put on and various other things. And the master then takes his officers and whatever he thinks is necessary in attendance down there during the building the latter few days. The entire licensed personnel is employed previous to the delivery in accordance with a prescribed schedule of days that the War Shipping Administration will allow for the men to be on the payroll.

Q. Who prescribes that?

A. I believe in most cases that has come from Washington to us through our New York office.

Q. From Washington; you mean by the War Shipping Administration?

A. By the War Shipping Administration.

Q. The Shepard Steamship Company has no office in Washington, has it?

A. No, through our department—

Q. When you talk about Washington you are talking about the head office of the War Shipping Administration?

A. Yes.

Q. Then is there an inventory of stores taken?

A. Yes. That time is eventually set by the Maritime Commission. Of course, they maintain a staff at these yards, and they set a time for an inventory—a joint inventory between the building yard, the Maritime Commission, and the War Shipping Administration, represented by our—or the vessel's officers.

Q. Then about this time I suppose you receive some instructions as to the allocation of the vessel's space for cargo?

A. Usually about the time that a vessel is due for delivery, why, they begin to get busy on just what they are going to do with the vessel.

Q. Now, I will hand you two letters on the letterhead of the War Shipping Administration, address 200 Bush Street, San Francisco, California, one dated May 24, 1943, and one dated May 25, 1943, on the subject of "SS George David [fol. 144] son," and ask you to examine them.

A. Yes.

Q. Were those letters received in the Portland office in the regular course of business?

A. Yes.

Mr. Wood: I will offer them in evidence.

The Witness: The receiving date is stamped on there.

Q. The date that is stamped in red is the receiving date?

A. That is the date they are received in our office.

Mr. Hicks: We have no objection to the exhibits.

The Court: Those will be admitted and become a part of the record and not as a part of your offer of proof.

Mr. Hicks: Yes.

Mr. Wood: I would like at this time to ask also that a letter of May 22 on the same subject, also from the War Shipping Administration to the Portland office of the Shepard Steamship Company, be also received in evidence. It was exhibited to counsel with these other letters yesterday afternoon, but apparently inadvertently left in Mr. Sanders' office.

Mr. Hicks: No objections.

The Court: Very well. They will be admitted in evidence as a part of the record in this case, and not as a part of your offer of proof.

(The three letters above referred to, dated May 24, 1943, May 25, 1943 and May 22, 1943, respectively, so offered, were thereupon received in evidence as Defendant's Exhibit H.)

By Mr. Wood:

Q. Now I note, Mr. Sanders, that in those letters it is stated in a general way what service the vessel is to be operated in. Did Shepard Steamship Company have anything at all to do with determining where the vessel was to go?

[fol. 145] A. No.

Q. Or in what service it would be operated?

A. No.

Q. Are you familiar with the procedure under which the vessels at that time were allocated for particular services? In other words, to make myself more specific, are you familiar with the general procedure by which in San Francisco there were representatives of the Army and Navy?

A. Well, yes. Apparently they had some kind of—well, at various stages of the development in cooperative committees between the military and the War Shipping Administration and from this Allocations and Assignments office we got the eventual answer to—not where the ship was going. It was an ~~extraordinary~~ case for them ever to tell us where the ship was going. This did not happen to be military cargo. We went to the Army and Navy and they just told us that we would deliver the ship to the Army or the Navy at a certain place period.

A. This was not an Army or Navy assignment?

A. This, I believe, was lend lease, British Ministry or War Transport, or whatever they call it.

Q. So at any rate all you knew about it was what you were told by the War Shipping Administration?

A. That is correct.

Q. Now, what duties, if any, would you have with respect to the loading of cargo for the vessel?

A. We have nothing to do with that under this particular instance.

Q. What duties would you have with respect to soliciting cargo or finding cargo for the vessel?

[fol. 146] A. There was no such thing.

Q. What duties did you have with respect to collecting freight for the vessel?

A. Well, there was no freight—there is no freight involved. If there was, we wouldn't have anything to do with it anyway.

Q. Yes. Who would?

A. Well, that gets into many, many phases of the General Order 34. It would depend a great deal where it went and how it went; but in the ordinary case, if there had been any commercial shipments, it was provided under the berth agency arrangement that the berth agent would bill the ship, manifest the ship, make any collections of freight, and settle claims.

Q. Did Shepard Steamship Company ever act as berth agent, as far as you know?

A. Well, we have since the war through different—

Q. Since the end of hostilities?

A. And I could not be sure whether we ever did. We might have in an isolated case here and there.

Q. Were you qualified to act as berth agent on the run made by the "George Davidson" under the rules of the War Shipping Administration?

A. No, not in that case.

JOHN C. SETTLE was thereupon produced as a witness in behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wood:

Q. Where do you reside, Mr. Settle?

A. In Portland.

Q. Have you resided here for many years?

A. Oh, some twenty-odd years.

[fol. 147] Q: What was your position with the War Shipping Administration?

A. Administrative assistant.

Q. In what office?

A. In the War Shipping Administration, Portland; and similar positions with the Maritime Commission.

Q. Similar in the Maritime Commission since—

A. Since September the 1st.

Q. Of this year?

A. Yes.

Q. When the War Shipping Administration was dissolved?

A. Yes. It was dissolved on September the 1st.

Q. Mr. Settle, will you explain just in a general way the organization of the War Shipping Administration; that is, how it operates with field offices and divisions, and so forth.

A. Well, the actual operation of the vessel has been entrusted to agents who have been appointed under the GAA

contracts for the reason that the amount of work involved was so immense it was impossible for one organization to handle the entire matter.

Q. What I want you to do is explain the organization of the War Shipping.

A. Well, the War Shipping Administration, as I understand it, was set up by executive order in the President's office to act as an operating agent for all of the vessels which were requisitioned and which were built during the war.

Q. And its head offices are in Washington?

A. The head offices are in Washington.

Q. You have never been through the head offices in Washington, have you, Mr. Settle? Have you ever been back there to Washington?

A. Yes. The War Shipping and the Maritime Commission are acting under the same administrator.

Q. Now, what branch offices are there on the Pacific Coast?

[fol. 148] A. Well, there is a branch office of the War Shipping in every port on the Coast of any consequence: Seattle, Portland, Los Angeles, San Diego, and they also have field offices in all parts of the world.

Q. How large an office is in Portland, how many personnel?

A. Well, in our office, which might be called an operating division, there are fifteen to seventeen people ordinarily.

Q. Does that include the Maintenance and Repair Division?

A. No, the Maintenance and Repair Division—that is another operating arm of the War Shipping. They have—I would not be able to tell you. They have a number of surveyors and clerks, personnel.

Q. Are you now talking about in Portland?

A. In Portland, yes.

Q. Do you know whether the same is true at other ports?

A. In every port, yes. They have the same setup.

Q. The auditing for this area is done through the Seattle office, is it not?

A. No, we have a local auditor here who audits the voyage accounts of all vessels; expenses.

Q. Is that auditor's office included in the personnel that you mentioned, being about fifteen?

A. No, that is separate.

Q. That is another separate office?

A. Separate office.

Q. Is there an RMO organization in Portland, or was there during the war?

A. We had a Recruiting and Manning Organization all through the war, but it has been discontinued.

Q. Did they have representatives in Portland?

A. Yes.

Q. Was that a separate branch of the WSA?

A. They had separate offices in the Lewis Building.

[fol. 149] Q. Now, I just want to ask you about some of the functions which your office and those other offices of the WSA here in Portland performed with respect to the operation of vessels during the war period. Did you, for example, have anything to do with getting docks for the vessels?

A. Well, we have helped agents acquire docks for vessels when they arrived; also when they are moved around in port.

Q. When you say "agents" who do you mean?

A. Well, our general agents who are employed to handle the operation of the vessel are subject to our orders.

Q. Now, how about the loading and discharging of ships. What do you have to do with the loading and discharging of ships?

A. Well, we received, usually, a wire from our San Francisco office when the vessel is coming to Portland, and we immediately so advised the general agent or the berth agent, and advised him what his program will be while he is in port.

Q. And does the War Shipping Administration have a contract with the stevedoring company that does the loading of the vessel or the discharging?

A. Yes, we have what is code named War Ship Stev.

Mr. Hicks: Maybe we can shorten this by the stipulation that on counsel's representation that in certain instances there were contracts between the stevedoring companies and the War Shipping Administration—if he says that is true, we will stipulate that is true. We don't understand it to be true in all cases, but that there were in effect certain contracts whereby the stevedoring companies had

contractual relations with the War Shipping Administration. Is that what you want?

Mr. Wood: I think it is in practically all cases. I will ask Mr. Settle about that.

[fol. 150] Q. Was practically all loading and discharging of vessels done under War Ship Steve contracts with the WSA?

A. They didn't in every case. Oftentimes the vessels were allocated to the Army or the Navy, and they would have their own stevedoring contracts.

Q. The Army and Navy had their own?

A. But if it was War Shipping entirely or lend lease then the War Shipping performed the stevedoring under their own stevedoring contracts.

Q. I think that is clear. Now I want you to describe the procedure with respect to the repair of vessels and the function of the M & R Division in getting ships repaired. Will you describe that procedure.

Mr. Hicks: You mean in this harbor of Portland?

Mr. Wood: Well, all right, in this harbor; and then, if he knows, generally.

A. Well, the general practice in all ports, the War Shipping Administration has what they call a Maintenance and Repair Department, with a port agent, and he has under his control a number of surveyors and a clerical force to check on repairs and the apportioning of repairs to various shipyards in the area. So the matter of repairs is handled by the Maintenance and Repair Department. The agent makes his report when the vessel comes in, the voyage repairs needed.

Q. You say the agent. To make it specific, the general agent makes some report?

A. The general agent through his engineer that is on board the vessel states that the vessel requires so much repair in the engineroom, and the deck department so much on deck.

[fol. 151] Q. I want to be specific about that. Is it the engineer that makes the report?

A. Well, the captain submits the report, ordinarily. It might be through the port captain, but the combined report

of the voyage—the report is submitted from the ship through the captain ordinarily to the M & R—through the general agent who represents it to the M & R, and they handle it with the repair yards.

Q. In other words, the captain of the ship gives the report to the shore side personnel of the general agent, and the general agent transmits it to the M & R; is that it?

A. Yes.

Q. And then what does the M & R do?

A. The M & R—during the war when it was not possible to secure bids, they gave it to whatever yard could take the job.

Q. And who selected the yard to do the job?

A: The Maintenance and Repair Department.

Q. Who let the contract?

A. Well, probably it was not what you might call a contract at that time, because it was a cost plus arrangement, undoubtedly, according to my understanding.

Q. And did the general agent make those contracts with the repair yards?

A. Well, the general agents do make minor—they have a limit as to what they can do. I think at one time if it was under five hundred dollars they could go ahead and have the work done on their own—on the voyage accounts.

Q: If it was under five hundred dollars the general agent could do it?

A. If it exceeded that amount it had to go through our Maintenance and Repair Department.

Q. Then who were the contracting parties for the repairs? [fol. 152] A. The repair yard—

Q. The repair yard on one side, and who was the other contracting party?

A. It would be—the War Shipping Administration would be.

Q. Now, are you sufficiently familiar with the organization of the War Shipping Administration to know whether or not it had a Labor Relations Department?

A. Well, we have no Labor Relations Board here.

Q. In Portland, no.

A. Not Portland. But I understand there is such in Washington, and we have a marine superintendent's office in San Francisco who has an experienced labor man on his payroll.

The Court: Let me ask you a question: Supposing a boat shipped out of New York which had been allocated to some steamship company that was general agent with headquarters in New York, and that general agent procured the master and the crew in New York for that vessel, and in the course of its travels the vessel came through the Panama Canal and came into the Portland harbor, what right of control, if any, did you have in connection with the personnel of that ship, representing the War Shipping Administration in this port? Could you go aboard that ship and fire any of those sailors?

A. Well, you say going through the Panama Canal. Now we did have cases of—

The Court: I don't care whether it went through the Panama Canal or whether it went around—

A. I am showing you where we maintained a pool of sailors and crew members down there in the pool, what we called the Panama Canal pool.

The Court: Wait. Maybe I didn't make my position clear. We will go back and start over again. Get away from [fol. 153] that pool business. Suppose a Liberty ship owned by the War Shipping Administration is assigned to a steamship company with its headquarters in San Francisco, and the ship is turned over in San Francisco and this San Francisco steamship company procures a master and procures all the seamen necessary to operate that ship at San Francisco, and that ship sails under the direction as to where it should go of the War Shipping Administration. Now that ship, in carrying out its business, comes into Portland harbor before it starts out across the Pacific or somewhere. Do you have any jurisdiction representing the War Shipping Administration over those seamen or over the master of that ship? For instance, representing the War Shipping Administration, could you go aboard that vessel and discharge either the master or any of the seamen?

A. The answer might be two or three ways on that question. The War Shipping Administration does not do business that way. We have channels, the same as they do in the government, and it would be through the general agent. If the captain was not satisfactory we wouldn't go down and fire him, but we would probably ask the general agent to fire him.

The Court: Then you never understood that as the representative in the local port of the War Shipping Administration you had any authority for any cause to go down and fire the master of the ship? You would have to go back through the general agent and complain to him and tell him to get us another master?

A. That is right; it would have to go through channels. It would not *be* proper or in order for us to go into the ship and fire anybody.

The Court: And it was your understanding that if it became a matter of discharging a master or any seamen that that was the business of the general agent, and if the situation required the discharge of the master or any of the other personnel on the boat that was the business of the [fol. 154] general agent to discharge them?

A. Well, those come up step by step, your Honor. In the engine room the chief engineer—it would go through him. If it was on deck it would go through the captain, and from the general agent to the captain, and all the way down.

The Court: That is what I mean. But of course the master of the ship has absolute control of the ship at sea. I suppose he can do a lot of things. But if the master was going to be discharged he would have to be discharged by the general agent, wouldn't he?

A. By the man that employed him.

The Court: That would be the general agent?

A. That would be the general agent.

The Court: I never saw in all these briefs or petitions or even in the evidence in the Hust case anything about that particular point being brought out. That is one of the best indications of employment, is the right to hire and the right to discharge, where that power lies.

Mr. Wood: It depends on for whom they are acting. If they are acting as agent in doing it, it comes right back to the same thing.

The Court: I know, but whenever a principal has an agent and the agent simply acts for and on behalf of the principal, certainly the principal can do anything that the agent can do. He doesn't have to have the agent do it. In other words, if I am the principal and you are my agent, and I put upon you certain duties to perform, I can turn around and say to you, "Well, I will do that directly." I don't have to ask you to do it for me.

The Court: There isn't any question about that.

[fol. 156] A. So it would require a modicum of experience.

The Court: They did a good job, too.

By Mr. Wood:

Q. Mr. Settle, you mentioned this pool at Panama. I would like you to explain this RMO pool arrangement.

A. Well, they had oftentimes had members of the crew abandon ship down in the Canal. They would get sick. And so they did establish what they called a pool down there. When vessels came through in order that they might be dispatched, why, they could draw from this pool to replace members of the crew.

Q. Who is it that established this pool?

A. Well, it came out of the Recruiting and Manning offices ordinarily. They were sent down there.

Q. That is what I mean. Did the general agents run this pool?

A. No, the War Shipping.

Q. Can you just give us an idea of the quantity of directives and policies and operating regulations that were issued by the War Shipping Administration covering operations of vessels?

A. Well, there are volumes and volumes of them, and it takes—we have quite a library, and to keep track of them—I know that they are there, and I know about where to find them.

The Court: It is not as bad as the OPA, though, is it?

A. No, we know where to find them, and we try to have a semblance of order.

By Mr. Wood:

Q. Do you function in interpreting those and instructing agents what to do pursuant to those regulations?

A. Well, in case of uncertainty on the part of the agent, he will call us and ask what is your opinion of this directive, or what should we do under these circumstances. It is our duty to give him an answer on it.

Q. Now, do the masters of vessels on occasion come to [fol. 157] your office with reports?

A. Yes, we quite often have the captain come in after they have been overseas, come in and report, give us a report.

Q. Now, supposing a crew member on a ship ships here in Portland and the ship goes out to Shanghai or some place, or before the end of the war it was some place like Sydney and he gets sick and has to leave the ship? Who arranges for his repatriation?

A. Well, we have agents in these forward areas, and he applies to our nearest agent, who repatriates him to this country.

Q. Now what kind of an agent are you talking about there? You mean the War Shipping Administration?

A. War Shipping Administration representative.

Q. In other words, do you mean people on the payroll of the War Shipping Administration?

A. Yes. We have quite a large organization overseas in every principal port of the world.

Q. I just wanted to make clear what you meant by "agent," because we speak of general agents—

A. War Shipping agents; representatives. They are called port agents or port representatives.

Q. But they are individual men who are directly employed by the War Shipping, are they?

A. In a similar capacity to our office here, to perform the same duties.

Mr. Hicks: If your Honor please, I want to ask that the last two answers of the witness be stricken on the ground that this whole subject concerning repatriation and the transfer of a man back to his home port is governed by contract, and the contract is the best evidence. Were you through with the witness?

Mr. Wood: I am through with the witness.

Mr. Hicks: I want to ask him some questions in that connection.

Cross-examination.

By Mr. Hicks:

[fol. 158] Q. What is the fact, Mr. Settle, as to whether or not this subject of repatriating a crewman and obtaining his transfer back to his home port is governed by contract between the general agent on the one hand and the union on the other? Don't you know that to be true?

A. Yes, I believe that is true.

Q. Yes. So when you said that that was arranged through the War Shipping Administration, what you meant was that the War Shipping Administration had approved the contracts which had been negotiated between the general agents and the unions; is that correct?

A. Whether they had approved this contract? I wouldn't say as to that. I know prior to the war if a ship sank at sea and the men and sailors were all ashore on some island, there was no obligation on the part of the owner of the ship to bring them home. But I know that since the war the War Shipping Administration has been leaning over backward in their efforts to take care of injured men and furnish them the very best of food and conditions under which to work.

Q. Yes, but am I correct that with respect to these various contracts

Mr. Wood: Let's refer to the specific clause, Mr. Hicks, if you are talking about a clause in the contract.

Mr. Hicks: If you will refer to Plaintiff's Exhibit No. 1, Section 19, page 5.

Q. Now Mr. Settle, will you kindly refer to Plaintiff's Exhibit 1, to Section 19 thereof, and state whether or not that is the basis and the procedure under which the repatriation and the transfer is effected of a crewman back to his home port?

A. Well, this has reference to men discharged on account of layup of a ship, who has been employed fifteen days or less, shall be given immediate first class transportation.

Q. By whom?

[fol. 159] A. By the War Shipping Administration eventually.

Q. Now, that contract that you have there is between the union, the Sailors' Union of the Pacific, and the general agent.

Mr. Wood: I think it is only fair to the witness—I don't know if he knows it—to point out the statements of policy; that the War Shipping Administration and the union adopted this as a working agreement between the WSA and the unions.

By Mr. Hicks:

Q. Just to make it short, Mr. Settle, it has been your understanding as an executive of the War Shipping Administration in the local field that the repatriation or transfer of crewmen back to the home port, and that sort of thing, was always governed by contracts entered into between the unions and the general agents, the operating companies, which contracts were approved by the War Shipping Administration?

A. I don't say always, no, because how long has this contract been in existence?

Q. From 1941 on.

A. Yes. But was it prior to that? I doubt it.

Q. I am referring to the period of the war.

A. Well, the period of the war, these conditions were with the approval of the War Shipping Administration.

Q. Yes. But the obligations related as between the union and the general agents who were bound to perform those things which the contracts provided they should perform; right?

A. Yes, as approved by the War Shipping Administration.

Q. Yes, I understand. Now, the general agency agreement refers to voyage repairs. Could you give us a definition of voyage repairs, Mr. Settle?

A. It is repairs that have become necessary on account of things that have happened during that voyage. It might [fol. 160] have been a breakdown of a winch, or wear and tear in the engineroom or the breakdown of something in the engineroom, or it might be an accident; a wave might have hit the vessel and created some damage, navigational hazards.

Q. Does voyage repairs likewise refer to repairs which are necessitated while a voyage is in process, while a ship is under way at sea?

A. During the last voyage, yes.

Q. Yes. Well, supposing a ship is out in the middle of the ocean and certain repairs are necessitated while the ship is still at sea. Are those voyage repairs?

A. Oh, those are immediate—for the safety of the vessel, you mean?

Q. Yes.

A. Those become—they would if the vessel had come to

Marine Cooks and Stewards in San Francisco, and if I am [fol. 176] not mistaken one of the mess boys on the "Sea Thrush" was fired in San Francisco.

Q. Can you remember any other occasion?

A. It is pretty difficult to answer that kind of question, because there is hundreds or thousands of these cases, and I don't keep track of them individually. I have got a stack that would fill this room.

Q. That is the only occasion—

A. And I remember this very specifically, because at that time there was trouble on the waterfront, and that kind of refreshes my mind.

Q. You remember the Shepard Steamship Company firing a man?

A. I remember that, yes.

Q. Can you remember any other occasion when Shepard fired a man?

A. Well, I don't know Mr. Shepard.

Q. I mean the Shepard Steamship Company.

A. Well, or any of the officials?

Q. I mean the company, when anybody from the company fired a man:

A. Well, I doubt if I could give you any specific instances offhand.

Q. Other than the one you mentioned?

A. Other than the one, because the one I mentioned is bright in my memory because of a specific instance that happened on the waterfront at that time.

Mr. Wood: That is all.

Mr. Peterson: That is all.

(Witness excused.)

EARL SANDERS, a witness produced in behalf of the defendant, thereupon resumed the stand and was further examined and testified as follows:

Dire examination (Continued).

By Mr. Wood:

Q. Mr. Sanders, I think we were talking about the services [fol. 177] performed by a general agent beginning with the time a new ship was constructed, and you had explained

port with them to be done, but they would be the obligation of whichever department they were in to carry them on while the vessel is at sea.

Q. Yes, but I am trying to get at the definition. Here you have your vessel out at sea and certain repairs have to be made before the vessel can proceed. Now are those repairs you refer to as voyage repairs?

A. No, we wouldn't—we customarily never refer to those as voyage repairs. Voyage repairs, as we know it, are the repairs that become necessary when the vessel gets into port and completes her voyage.

• • • • •
By Mr. Hicks:

Q. Now these surveyors that you mentioned who are stationed in the local port and who are employed by the War Shipping Administration, what is the fact as to whether or not they exercise a sort of supervisory function in respect to repairs? They check to see whether they are necessary?

A. They check the vessel, the repairs to be made, the machinery, or whatever it may be, to determine whether it [fol. 161] is required, and then while in the repair yard they are on the job to supervise it and see that it is repaired according to their specifications.

Q. And the executives or officials of the general agent are there likewise cooperating and assisting, are they not, in respect to the repairs?

A. Well, I don't know what they would be doing except that they would be keeping in contact with the repair yard to see that the repairs are finished; but the job would be under the supervision of the surveyors of the M & R.

Q. Now, what is the fact as to whether or not the stevedoring companies, to your knowledge, have contracts with the general agents in respect to the loading, and that sort of thing?

A. Well, many of them did before the war, but after the war started and the War Shipping took over, why, their contract expired because there wasn't anything for them—the agents themselves had no cargo to offer.

Q. So then the general agents did not contract as agents for the War Shipping Administration in respect to the stevedoring?

the procurement of the master and the officers, and I think we had identified those letters from the War Shipping Administration with regard to the allocation of the vessel, and you testified concerning the taking of an inventory. Now, what else do you have to do in connection with getting the vessel ready for its voyage? You have already testified you had nothing to do with the cargo, as I recall it. I am not sure if I asked you that question. Did you have anything at all to do with procuring a cargo for the vessel?

A. No, no.

Q. Or with loading the vessel?

A. No, not as a general agent.

Q. Now, how about storing a vessel. Will you explain your functions with regard to storing a vessel?

A. Well, while all the rest of this is going on we try to find out when they are going to get delivery, where you can find a place to store the vessel, and quite often that has to be determined with the aid of the War Shipping Administration because of priorities, bearing in mind that this entire effort was done due to the urgency of the war rather than with any other motive in mind.

The Court: It was a question of coordinating the thing, wasn't it?

A. That is correct.

The Court: In other words, during the war-time our harbor down here was full of ships. Well, they had to have the War Shipping Administration to allocate different dock facilities for different ships so that there wouldn't be any collision between them; isn't that right?

A. There were many what we might call priority arrangements [fol 178] made during the war, some of them by direct presidential order, or a certain committee some place in some instances that reported to no one but the President of the United States. And then they would be in existence for a while, and then they would change to some other program. And what was in vogue at that particular moment of the "George Davidson" would be a little hard to describe. But in any event, during all this time it is up to us to supplement the limited stores that the Maritime Commission Procurement Division has supplied to the vessel through the medium of fitting stores, as it is called at Oregon Ship.

A. No; I don't know of a general agent that has a contract with a stevedoring company. It would be with the War Shipping Administration or with the Army or the Navy.

Q. Did I understand you to testify, Mr. Settle, that the general agent could make repairs himself up to five hundred dollars?

A. No, not himself, but he can go to that expense and have it done up to that point.

Q. I see. But if the amount went above five hundred dollars then the authorization would be required from the War Shipping Administration?

A. Yes, sir. That is the limit of his authorization.

Q. And that would be true as to voyage repairs or any other kind of repairs?

A. Yes.

Mr. Hicks: That is all. Thank you.

[Vol. 162] Mr. Wood: No further direct. Thank you.
(Witness excused.)

JOHN N. SNEDDON was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Peterson:

Q. Mr. Sneddon, where do you live?

A. I live at 4025 Southeast Hawthorne Boulevard.

Q. In Portland, Oregon?

A. Portland, Oregon.

Q. What is your occupation?

A. I am the business agent of the National Union of Marine Cooks and Stewards for the Port of Portland branch.

Q. Do you serve in any other capacity with the union?

A. Yes, I am one of the general council of the union, which is recognized as the executive board.

Q. That is the executive board of the Marine Cooks and Stewards Association that is referred to here?

A. Yes.

Q. Mr. Sneddon, how long have you held these offices?

A. Pardon me, sir.

Q. How long have you held these offices?

A. Oh, I have been on and off an officer of this Marine Cooks and Stewards Union since 1937.

Q. You say off and on. Do you know whether or not you were in this office on October 31st, 1941?

A. This position I am in at present?

[fol. 163]. Q. Yes.

A. No, I wasn't in this office at that time.

Q. When were you in this office following October 31st, 1941?

A. Pardon me. Can I have the question again?

Q. My question is when were you in this office, the office that you have referred to that you now occupy? When did you assume those duties?

A. I assumed the duties I have at the present moment the first week of March, 1944.

Q. And prior to that time did you have any duties or any official capacity with the union?

A. I was the assistant secretary of this Marine Cooks and Stewards Union in 1937 and 1938. Assistant secretary at that time was the second highest office in the organization. And in 1939 and 1940 I was the first—the official title of the job was the first patrolman in San Francisco, which was No. 1 business agent; and from October, 1941, until Christmas Day, 1941, I was the agent in the Honolulu branch; that is, in the Hawaiian Islands. And in September, October and November I was the agent for this organization with the Seattle branch, and from there I went into the United States Army.

The Court: That is October and November of what year?

A. 1942, your Honor.

(An agreement between Marine Cooks and Stewards Association of the Pacific Coast and Steamship Companies in the Intercoastal and Offshore Trade and the Alaska Lines, dated October 31, 1941, was thereupon marked Plaintiff's Exhibit 10 for identification.)

Q. Mr. Sneddon, I hand you Plaintiff's Exhibit 10 for identification and ask you what that is.

A. This is the master agreement between the Marine Cooks and Stewards Association and the Pacific American Steamship Owners Association.

[fol. 164] Q. And the date that it bears is October 31st, 1941?

A. Yes, sir.

Q. This exhibit is a printed copy, is it not?

A. Yes. It is an exact duplicate of the original agreement that we have with the Pacific American Shipowners Association.

Mr. Peterson: We offer this in evidence.

Mr. Wood: May I ask the witness a couple of questions? I may not have any objection to this, but I just want to satisfy myself that it is an original. I see, Mr. Sneddon, just for example, that on page 35 there is printed a decision of the Board under date of Washington, D. C., March 12, 1943, a decision before the Maritime War Emergency Board. This publication, then, was obviously printed after 1943.

A. You mean the publication?

Mr. Wood: This booklet was printed, obviously, after 1943.

The Court: That is, this booklet was printed after the date in '43, because otherwise you couldn't have a decision printed in it that is dated in '43.

Mr. Wood: That is after you were in the Army, of course. Now, what I want to know is are you certain that this agreement which is printed in the forepart of this book does not incorporate various amendments and changes in the working agreement that were made after 1941?

A. This agreement here is the original master agreement, and any other amendments that were made after that were made through negotiations with the Pacific American Shipowners Association, and they invariably had to be decided upon by the War Labor Board. And the War Labor Board and the different governmental agencies who had the power to hand down the decisions as far as maritime was concerned, they were handed down by them and they were [fol. 165] added to this as they were developed. And the negotiations actually, after they had been carried through so far, as far as they could be carried with the Pacific American, had to go to the different boards for ratification, and so forth, the same as we are in the position today: we have all our ships tied up waiting on the board's decision. The

agreement has been reached by one of the organizations and the Pacific American Shipowners Association, but nevertheless we could not go until we had the ratification by a governmental board. Another decision will have to be added to this when it is made.

Mr. Wood: Your understanding is that this is an exact printing of the first agreement, with the exact printing of the amendments?

A. That is true.

Mr. Wood: Well, if that is the case—

The Court: Very well. It will be admitted.

(The copy of agreement above referred to, so offered, was thereupon received in evidence as Plaintiff's Exhibit 10.)

By Mr. Peterson:

Q. Now Mr. Sneddon, are these printed documents placed on board the vessels as they leave a port, or before they leave a port?

A. Yes, they are for distribution to the membership generally, but we do make sure that each delegate on board each vessel is supplied with one of these along with a great lot of other material to carry on the work properly.

Q. And this contract bears on its face that the Shepard Steamship Company is a member of the Pacific American Shipowners Association.

A. Yes, they are. They have been for a quite a long while.

Q. Now, I hand you Plaintiff's Exhibit No. 9 for identification, and ask you what that is.

[fol. 166] A. Well, this is a copy of the agreement and working rules in the same kind of form as this other one. This is a supplement to this. This is what has been put out with our agreement. There were certain things negotiated and added to or eliminated, and so forth, and then this becomes the master agreement; replacing that one; when this one is out of date then this one replaces that, and this is our master agreement with the Pacific American Shipowners Association.

Q. And it bears on its face dated October 1st, 1944, and the further wording "Revised June 1st, 1945." I will ask you if this document in the printed form that this exhibit constitutes was placed on board vessels in the same fashion that you have described as to Plaintiff's Exhibit No. 10?

A. Yes, it was.

Mr. Peterson: We offer this in evidence.

(The agreement above referred to, so offered, was thereupon received in evidence as Plaintiff's Exhibit 9.)

Mr. Hicks: Your Honor, the question is coming up—it was mentioned by Mr. Sanders that they have a contract with the Masters, Mates and Pilots, and that it is a contract which was drawn up on the East Coast and that they were not signatories to the West Coast Masters, Mates and Pilots agreement. We do not have available now a copy of that agreement, but I think it is agreed that we should complete the picture with respect to these various agreements. I wondered if Mr. Sanders might have a copy of the one that was applicable to the East Coast, the 1944 agreement.

Mr. Earl Sanders: 1944?

Mr. Hicks: And the one that preceded it, 1943.

EARL SANDERS, a witness in behalf of the defendant herein, thereupon resumed the stand and was further examined and [fol. 167] testified as follows:

Questions by Mr. Hicks:

The Witness: In short, we had an agreement—let's get this right now, if we can—consummated on the East Coast. Due to our intercoastal operation they controlled officer personnel agreements there. When we started out here, after being more or less out of business on this coast entirely for a period of time, and handled it under a general agency, the question came up then as to how we were to handle this. They wrote an agreement—I think we had a copy which I myself questioned because of some typographical errors, apparently, or something—I haven't looked at it for years—at that time. And it was agreed to by the Masters, Mates and Pilots, and applies to the M.E.B.A. as well—both instances—by their organizations in the East. And as you know, there were many, many agreements with the Masters, Mates and Pilots and the M.E.B.A. on the East Coast, while on this coast it was pretty well standardized under the Pacific American Shipowners. So then that was the reason that these cases that you have introduced here as evidence in a couple of exhibits were, at the instance

of the War Shipping Administration, I think principally, taken before the National Labor Relations Board, and they handed down a decision directing the Pacific American, on the one hand, with the subscribed membership—and in connection with the relations with those two unions they were the first to hand it down, I believe—and also directed the group commonly known as the Atlantic Coast and Gulf Operators, who had no collective agreement between themselves, and each individual one—I think there was some ninety-odd agreements with the Masters, Mates and Pilots, if I remember correctly—and they were all directed to change their agreements in any place where they were at [fol. 168] odds, and they printed a form. This is the one that I used is the Pacific American, because it has exactly the same language, but it does not include the whole agreement. They were told to write agreements to incorporate those changes and make them standard as to any other parts of the agreement not covered. And that is not an agreement; that is a handed down decision by the National Labor Relations Board with a case number attached to it period. That is just exactly what it is.

Q. Handed down by the National War Labor Board?

A. That is right. And it applies to War Shipping Administrations. We have, for instance, in our files a letter from—I forget what union it is now, but one of those two licensed agreements—where Mr. Shepard signs up with somebody else to continue to use these terms for a certain period after the six months expiration—I mean when these would automatically go out. But our agreement—in this case I can't recall, when this case was handed down. I think these are dated in '44, and I think that that case made them retroactive to a certain time. But that was an effort to standardize the agreements of the Masters, Mates and Pilots and the M. E. B. A.

Q. After the National War Labor Board handed down its directives out of which the agreement came, that you are now talking about, isn't it true that the steamship operators or the general agents signed the agreements and entered into actual agreements pursuant to those National War Labor Board directives?

A. Only in the name of the War Shipping Administration on this coast, I believe, because I don't believe—I could be corrected on this, but it would be technically correct—it

doesn't make much difference, but I think to be technically correct they will obtain as long as the national emergency exists and until it is declared off. I believe there [fol. 169] is something in there on that. But it wasn't there when they were written, but as I understand it they will take an acknowledgment—however, I don't think there is any issue on that point between the organizations and the operators. I don't think there ever will be. It will just be a formality of acceptance. But the history of it is that these were to clear up the inconsistencies among the divers agreements in effect pertaining to the Masters, Mates and Pilots and the M. E. B. A., because the War Shipping Administration wanted the thing somewhere within reason. We had one, for instance, that—frankly, from my own personal standpoint, why it was ever signed I don't know; I wasn't there and had nothing to say about it—but it had certain terms in it—that if we had tried to do that, if we had tried to hire men for War Shipping Administration ships, which under the urgency of the war they expected us to get those ships going, and if they had tried to apply our agreement entirely to it on this West Coast there wouldn't have been a man on them.

By Mr. Hicks:

Q. This directive that came down from the National War Labor Board, as you mentioned a moment ago, out of which your contract grew, was signed by the Pacific American Shipowners Association?

A. Yes, that is right.

Q. J. B. Bryan, President, acting on behalf of the following member companies in their capacity as general agents of War Shipping Administration?

A. Yes, in their general capacity. That is the only way they signed it.

Q. That is what you were referring to in your previous testimony?

A. This may sound terribly technical, but in actual fact this one that he signed you will find in a true copy our name, [fol. 170] because there is a case with a slightly different number to it that takes in us and also takes in part of the Grace Line. The Grace Line is only partly in this; that is their West Coast operation.

MICRO CARD
TRADE MARK R

1904



48

Q. But the terms of the two agreements you refer to are identical?

A. At the time when that case came down that is what the idea was, to make them all uniform.

Q. Now Mr. Sanders, prior to the date of this agreement, you were operating under the terms of another agreement; that is, by that I mean you were conforming to the terms of another agreement that was in effect with respect to your Pacific Coast operations; am I correct in that, with the Masters, Mates, and Pilots?

A. The actual fact is that—you are catching a time now when we were out of operation here on this coast, and I wasn't there. But as I recall, when we jumped into this general agency, under the statement of policy which had been written prior to our general agency contract, then it becomes a part of the formula that we either were non-union or we had a union agreement. Very suddenly thereafter they took on the ships or they were allocated the ships, and, if I remember correctly, without proper authority we signed those ships on under those wages of the Pacific American in the absence of any other specific information, which we evidently got soon after that, and that is this agreement here, that you have here. If this is correct—it might be challenged, because I think the girl that typed it—I remember reading it four years ago—about drove me crazy with it.

Q. Now, from 1941 on, while you were operating coastwise on the Pacific Coast—

A. We didn't operate here in '41.

Q. Oh, you didn't at all in '41?

A. No. From about the end of 1940, to my knowledge, we didn't have an intercoastal ship out here. We had lost one [SPL 171] ship, and the Maritime Commission had taken two ships and chartered them out to some outfit from the East Coast. We didn't operate, and I wasn't even with the company. They did carry on, but they shifted the few ships they had left—all charters had to be through the Maritime Commission. Even though they were your own ships you couldn't do a thing with a ship. They would tell you what to do with them.

Q. But during '42 and '43 your company was operating ships coastwise on the Atlantic Coast as general agents; is that correct?

A. We took our first ship under allocation in Baltimore in August of '42.

Mr. Hicks: I want to interrupt, if I may. I don't want to keep Mr. Sneddon. He has to get back. I may have another question or two. I appreciate your courtesy.

(Witness withdrawn.)

John N. SNEDDON, a witness produced in behalf of the plaintiff, thereupon resumed the stand and was further examined and testified as follows:

Direct examination (Continued).

By Mr. Peterson:

Q. Mr. Sneddon, did you serve on any port committees?

A. Oh, yes.

Q. On what port committees did you serve?

A. As I said, on port committees in San Francisco, in the years I previously mentioned, '37, '38, and so forth, and I also served on the port committee here in Portland.

Q. Now in your present capacity in the union have you received certain copies of the minutes of port committee meetings which you have attended?

A. I receive copies of all port committee minutes. I get [fol. 172] them all. They are all sent throughout the whole organization.

Q. You received copies of the minutes of port committee meetings?

A. Yes, I do.

Q. I hand you a document which purports to be a release dated January 7, 1945, from Hugh Bryson, Vice President, and I will ask you what that is.

A. This is a copy of the proceedings of our port committee meeting in San Francisco. There were a good many cases, about six cases, that were before the port committee, and this is the ruling as decided by the committee comprising the Pacific American Shipowners Association and the Marine Cooks and Stewards. This is a copy that is sent out to all branches for their guidance in settling disputes that come up in the meantime in other ports. So they have a ruling on these, and if any dispute comes up on board a vessel they have got one similar to this for checking. We have a ruling laid down so there won't need to be any

further port committee meeting on this issue and this ruling, which governs this organization.

Mr. Peterson:

Q. I will hand you a group of documents here and I will ask you if these are the documents that you selected pursuant to our request when we explained the general problem to you. What is your answer to that?

A. Yes, these are the things out of my official files. All of them are out of the official files and the official records of our union, every one of them.

Q. And the documents that you have here have been received in the regular course of business?

A. Oh, yes.

Q. Is it the regular course of business to receive copies such as appear in the documents that you have?

A. Oh, yes. That is the only way we can operate.

[fol. 173] The Court: He says they are part of the original records of his union.

By Mr. Peterson:

Q. Are you the custodian of those records?

A. Yes, sir. I am solely responsible for them.

Mr. Peterson: We will hand them all to you, Mr. Wood. We have prepared copies.

Mr. Wood: Are you going to offer these?

Mr. Peterson: We offer all of those in evidence, with the stipulation that copies may be substituted.

Q. Mr. Sneddon, during your experience in the capacity that you have described, have you ever known of a general agent discharging a seaman?

A. Oh, yes; many times.

Q. Have you ever known of a War Shipping Administration official discharging any seaman or master or licensed officer on board a vessel?

A. I could not talk officially for any of the licensed groups, but since I have been in this port I don't ever recall any official or anyone in an official capacity in the War Shipping

Administration firing a man in the department I represented; at least that. I don't know if it ever happened.

Q. Now, have you ever known of a general agent discharging a seaman in the presence of a War Shipping Administration official? If you want your letter to refresh your memory—

The Court: The War Shipping Administration's representative, John Settle, said that just was not done.

Mr. Peterson: We want to prove he was right.

A. (Referring to documents) Yes, I remember this case very well.

Q. What was the incident where a War Shipping Administration official was present at a time when a general agent discharged a seaman on board a vessel that was operated by the general agent?

[fol. 174] A. Pardon me?

Q. What was the incident that you recall when a War Shipping Administration official was present when a general agent discharged a seaman on board a vessel that was operated by the general agent?

A. The reasons for the firing, and so forth?

Q. What were the facts as to the incident?

A. Well, the "Gonzaga Victory" came in here from the Orient and—

Mr. Wood: To shorten the matter, may I ask who was the general agent for the "Gonzaga Victory"?

A. Lidell & Clarke was the agent here for the Alaska Steamship Company.

Mr. Wood: I am going to object to any testimony about a specific instance of the firing of anybody.

The Court: You do know of a general agent firing one of the crew in the presence of a representative of the War Shipping Administration?

A. Oh, yes. I was right there. It was in the galley of the "Gonzaga Victory."

Mr. Peterson: Does counsel object to the other documents that we have proposed to introduce in evidence here?

Mr. Wood: Well, I will let you put one of them in by way of example and eliminate the rest.

The Court: The one he handed you there will be put in by way of example without objection, and the objection will be sustained to the remainder of them. You can have them marked for identification and file them.

Mr. Peterson: May we substitute a copy for that document?

The Court: Very well.

Mr. Peterson: I have a copy, if you want to compare it.

The Court: That is admitted without objection as an example proceeding. The objection to the remainder of [fol. 175] the documents of similar character submitted to counsel will be sustained.

(The copy of the document referred to, consisting of three pages, headed "Minutes of Port Committee Meeting," etc., dated February 2, 1945, so offered, was thereupon received in evidence as Plaintiff's Exhibit 11.)

Mr. Peterson: You may take the witness.

Mr. Hicks: We will withdraw our offer of the remainder, your Honor.

The Court: Very well.

Cross-examination.

By Mr. Wood:

Q. Mr. Sneddon, this exhibit that has just been offered, I notice, refers to Mr. Brown. I suppose that is Mr. Brown in Seattle. Do you know him?

A. I can't answer that question unless I can see—

Q. Mr. W. L. C. Brown.

A. Mr. Brown is the Brown of the Pacific American Ship-owners Association's port committee. He is a representative of the port committee in San Francisco.

Q. Do you know what his initials are? Is that W. L. C. Brown?

A. Yes, I know it is W. L. Brown.

Q. You mentioned you knew of lots of occasions of discharging or firing. Can you name any occasion when the Shepard Steamship Company fired any member of the crew?

A. Oh, yes; a good many instances.

Q. The Shepard Steamship Company?

A. Yes.

Q. Well, name one.

A. In 1938—1939; pardon me—I was patrolman of the

Q. You already explainged that an inventory was taken.

A. That was an inventory. Now to supplement that—

Q. Just briefly, you would go to the different supply houses for food and groceries?

A. We would purchase in the name of the United States Government all the stores, subsistence, and the rest of it, in their name.

Q. What type of articles would that be? Flour, sugar and meats?

A. All subsistence stores. That is everything to eat there.

Q. How about the ship's supplies, such as rope, paint—

A. Rope, paint, cement, buckets, toilet paper, whatever you happened to need. It is quite a job to figure out what you do need.

Q. How were bills for those things rendered?

A. They are rendered in accordance with the War Shipping Administration's instructions to us.

Q. And to whom are they rendered?

A. With the prescribed certification which the Comptroller General of the United States requires on all bills for the account of the United States, which is a vendor's certification as to its correctness. Having that on there, we then check those bills against the actual receipts that the vessel's officers sign over to us. We check the compilation [fol. 179] and send those approved as to computation to our Boston office, where disbursement is made from this revolving fund.

The Court: Made on your company's check?

A. They are made—no, I don't know, no check that we had ever had before, because it is in a different bank than Shepard ever uses. It is set up in a separate bank, a separate account entirely.

The Court: But Shepard draws the check and signs it?

A. Shepard or any general agent is authorized by his general agency contract and subsequent fiscal regulations to sign those checks.

The Court: The point is this: The agency contract provides that the government shall reimburse the company for the expenses for maintenance, and such as that, and they can make advances, and all of that. That was in the President's directive too. But the actual direct dealings between the seller of the commodity used aboard the ship, the actual transaction was between the seller and the Shep-

ard Company as general agents. Then the money Shepard uses to pay for the thing may come from the War Shipping Administration, or through it.

A. I might correct, if I may, one impression. By the time we got into this general agency, the idea of reimbursement was entirely out the window, because it had practically broken some of the biggest steamship companies. Reimbursement was so slow that the actual money was provided for—I guess this is subsequent to GAA 44-42; I am not sure—it provides for the United States Government to make available to the general agent a fund of money which is to be set up in a thing called a revolving fund, which he is to disburse from, and he is not to use it or put anything in it except that which he is willing to swear is to the account of the vessel. We also certify in passing a bill through that we have accepted no rebates, nor anything of [fol. 180] that nature in connection with this sale, nor any commissions for having bought it; or anything to that extent. It is strictly a deal—and the vendor's certification makes it so that he is taking an oath to the United States Government that he is making a deal directly with them, and that it is true. He can collect on that bill over our objection.

By Mr. Wood:

Q. Mr. Sanders, how do you require that the bills be rendered to Shepard as agents? How is that bill addressed? Is it made out just Shepard Steamship Company?

A. No, United States of America, War Shipping Administration, Shepard Steamship Company, General Agents.

Q. Now, supposing purchases are made in the State of California or Washington, and a sales tax is in effect. What is the practice as to whether or not a general agent pays the sales tax on those purchases?

A. If the general agent bought anything as an individual he would pay the sales tax. The government requires the vendor to charge a sales tax. But the general agent is not buying this. The government is buying this, and the general agent, according to his agreement, upon signing it is issued a tax exemption number by the United States Government, which he can use in the event he is charged a sales tax, which he should not be. However, this vendor's certification on there states—they have a clause that no state or local taxes have been charged.

Q. In other words, if the general agent purchased something—

A. I mean for his own account, he is no different than anyone else, like if you purchased it.

Q. Like an office desk, or something like that; but things purchased for the vessels—

A. Things purchased for the United States vessel, for [fol. 181] the account of the United States—

Q.—are tax free?

A.—are tax free.

The Witness: I might say one thing in that respect: This GAA contract specifies certain things, but it has been supplemented by fiscal regulations and auditing and accounting instructions, and our instructions specifically, very specifically, from the outset, before the first ship we ever took over, were absolutely to buy nothing for the account of the Shepard Steamship Company. We have that in my files.

Mr. Hicks: If we are going to have a quotation from any regulations, I think we should see them.

A. I don't know. I couldn't quote it.

The Court: Under this contract and under the President's directive, why, the War Shipping Administration had the power to make advances and everything else.

By Mr. Wood:

Q. Now Mr. Sanders, we have the ship's stores and inventory, and so on. Now tell us about the procurement of the crew. I will call your attention to Article 3A (d) of the General Agency Agreement, which says: "The General Agent shall procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon

[fol. 182] the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the orders of the Master." Now will you explain in practice—and do so briefly, because it is getting late—how you functioned under that to procure the mates and the crew on the vessel?

A. Check with the master to see if he wants to get the crew down there the first thing in the morning of the day we get delivery, just how he is going to work it out as to relieving the delivering crew from the shipyard. We call the three unions, unlicensed, and tell them such and such a ship loading out, such and such a dock. Have a full crew." That is in case of new ships coming in.

Q. Do you have anything further than that to do, in picking candidates?

A. Never see them in most cases until they arrive.

Q. Where do they go?

A. They go to the ship. They report to the ship.

Q. Who do they report to on the ship?

A. Well, the deck crew reports to the mate, as a usual thing. The engine crew reports to the first assistant, and the steward's crew to the steward.

Q. What I want to find out is whether anybody from the Shepard Steamship Company's office, anybody from Shepard's shore personnel, goes down to the ship to interview those men or otherwise to pass on their qualifications?

A. No.

Q. Will you explain now how the crew signs the articles? Who signs them on?

A. They are signed on in front of the Shipping Commissioner.

Q. If a man is unfit for duty, who decides that? Who [fol. 183] makes the decision and sends him back and asks for another man?

A. Assuming that a man has proper qualifications issued by the Steamboat Inspectors, it is pretty hard for anybody else to question his ability, until he is either drunk or something.

Q. Well, suppose a man came down too drunk to go to work!

A. That is the master's responsibility to keep the crew straight.

Q. I mean who would tell the union that they didn't want

the man? Would you do it, or would the master do it? I mean I am just trying to figure out whether the ship's officers—

A. They quite often would just send him back to the hall there and call for matters of reciprocal—in the business of handling this thing we all insist that they be ordered through the office now, because there would be duplications going down there, two or three men called, so everything is cleared through our office. We order another man for the job.

Q. Who would send him away from the ship?

A. Well, probably the chief engineer, if it was down below, or the captain if he is aboard, or whoever happens to be in charge of the vessel at the time.

Q. If you yourself were aboard one of the vessels at that time would you exercise that prerogative to send the man away?

A. No.

The Court: If you were down on that boat and the crew had been sent down, and you saw one of the crew that was just all crippled up where he could hardly walk, you mean you would not have a right to send him back and say "Send us an able bodied man"?

A. Whether I would have a right to?

The Court: Yes.

A. Under this agreement that we are under here with the War Shipping Administration I would not have a right to.

[fol. 184] The Court: Why not?

A. Because they are subject only to orders of the master. Besides which it is a very poor policy for any steamship man—

The Court: To override the master?

A. —to override the master. That is what you have got him there for. You can't keep good men—

The Court: In other words, you pick the master. Well, suppose that the master you selected and sent down there had got by with the approval, and you found out when you got down there something that absolutely disqualified him?

A. The master!

The Court: Yes—that absolutely disqualified him, that had not developed when you submitted him to the War Shipping Administration, and he had even gotten by them, but you discovered before the boat sailed that he was absolutely unreliable and incompetent, and that after a few days at

sea he went crazy, and it was dangerous to send him out, and you discovered that. Wouldn't you have a right to order him off?

A. No.

The Court: And send down another master for approval? Or would you just let him go?

A. No. The United States Government many years ago provided for that. The master is qualified under his license issued by the Steamboat Inspectors Service, which was in the Department of Commerce for many years, and latterly in charge of the Coast Guard. And no one can—any master that I might attempt to fire would have a right to appeal, and it has been done in many cases—a master has collected a great deal of wages due to wrongful discharge, because there is nobody that can tell him that he is unqualified except the Steamboat Inspection Service that issued the license.

[fol. 185] The Court: That is not the question that I asked you. I assume that if a discharge was wrongful and without cause, or even if the master felt it was wrongful or without cause, he would have recourse. But I am taking just a rare and extreme case, perhaps: Supposing you certified a master to a boat, he had all his papers in order and everything; that is, he has papers showing that he is the master, and you certified him down there, and he gets by the War Shipping Administration on the papers that he exhibits, but before the boat sails you discover that all his papers are forgeries; that he is not a qualified or approved master or anything else, and he has no right to ship as a master. Wouldn't you have the right to kick him off that boat and send for another master?

A. That is a matter for the Coast Guard. They have a hearing unit, and have had for many years for that purpose. They wrote his license.

The Court: You are begging the question. I am asking if the Shepard Steamship Company, who send him down to that boat as master wouldn't have a right to take him off of that boat when they found that his papers were fraudulent; that he was not a competent, qualified master, and he had no business in charge of a boat? Do you mean to say the steamship company wouldn't have a right to fire him and send another master on board the boat?

A. We wouldn't be able to find out if his papers were fraudulent until he had had a hearing, because he has a

right to that hearing before the Coast Guard. A master is not just a common laborer.

The Court: What?

A. A master is not a common laborer, by any means. He is authorized and has his license.

Mr. Wood: Maybe we can get it by just asking the witness what he would do if he found that situation. What would you do if you found that situation?

[fol. 186] A. If I found that situation, and I suspected it to be true, I would notify the War Shipping Administration. We have done it, as a matter of fact, right here. We have notified the War Shipping Administration that we had a situation like that on our hands. It happened at the time that we had a Shipping Commissioner present. We contacted the Coast Guard. The Coast Guard called the man up to their hearing unit, and he became a little obstreperous up there, so they got a little tough with him. That was out of our hands. They took his license away from him. Consequently he wasn't qualified as a master, and he was dismissed himself.

The Court: Then there is no difference in that situation during the war and what it was before the war. That always has been the practice.

A. Well, of course, before the war we had him directly under our control. I mean it was a matter of mechanics. There were lots of men with master's licenses, and if he got too tough they just didn't get a ship next time, and they knew that.

By Mr. Wood:

Q. Before the war could you have fired them directly yourself, or would you have fired them directly yourself?

A. I would not in my position, no, because before the war in that particular case that work was handled and the jurisdiction over them was handled strictly in the head office in New York.

Q. Well, I mean in the head office. Could Mr. Shepard fire them directly?

A. On our own ships?

A. Yes, on your own ships?

A. Yes, they could have fired him as a matter of general principle, that they just didn't want him handling their affairs. He is handling their money and their affairs period.

[fol. 187b] Q. I mean could they fire him without having a hearing before the Coast Guard?

A. If they were sure they were right. He might still have recourse against them.

Q. He could sue for wrongful discharge?

A. Yes.

The Court: There is no difference during the war as to that situation.

A. The difference during the war was that he had recourse right away, because he knows what his rights are here, and he knows that we are not his employers and he can go right to the War Shipping Administration, which they did immediately, and seek to recover. That is entirely the difference.

The Court: All right.

By Mr. Wood:

Q. Now, I suppose you had other duties. You would order docks would you, for moving a ship about in the harbor, if they had to move to several docks during loading?

A. Well, up until the time it is turned over either to the Army or the Navy or the berth agent we would take care of the piloting and whatever necessary moves are made, and then we turned it over to them and they took over from then on.

Q. After it is turned over to the Army, Navy, or one of the berth agents, they would order docks; is that right?

A. They usually take care of it. Yes, that is right.

Q. Now about the ordering of pilots for the vessel?

A. Well, that varies in various ports. I mean it is a matter of just cooperation between the berth agent and the general agent. In the usual case the berth agent knows what moves he wants to make and when he wants to make them to work in with his cargo, so he handles it.

Q. Now, I want to hand you Defendant's Exhibit I for [fol. 188] identification, and have you identify that document and tell what it is. It is a letter, I should say; it is not a document.

A. This is a letter from the American President Lines, May 27, 1943, to us.

Q. Was it received in the Portland office in the regular course of business?

A. Yes. It has a received stamp there.

Q. The American President Lines was the same company that had been appointed berth agent?

A. Correct. Pursuant to those instructions they asked us to —

Mr. Wood: I show this to counsel and then I will offer it in evidence.

The Court: Any objection, Mr. Hicks?

Mr. Hicks: No objection.

The Court: Admitted without objection.

(The letter referred to, dated May 27, 1943, so offered, was thereupon received in evidence as Defendant's Exhibit I.)

The Court: Was the American Steamship Company berth agent?

Mr. Wood: American President Lines was berth agent for this vessel.

Q. While on that subject, do you know of your own knowledge where the American President Lines operated in peace time?

A. Yes, it operated around the world service to some extent.

Q. The far Pacific?

A. The far Pacific, yes. American President Lines is a government owned corporation.

Q. They operated generally on the route on which the "George Davidson" made this trip; is that correct?

A. That is correct.

Q. Now I will hand you Defendant's Exhibit J for identification.

A. This is the prescribed authority for the berth agent to sign bills of lading for the master, signed by the master, [fol. 189] at the request, in that other letter.

Q. That, I notice, is a copy. Is it from your official files?

A. Yes. I took it out of the files this morning.

Q. Would you be able to say whether it is a true copy of the original signed by the master?

A. I am quite sure it is, because it is a prescribed paragraph here.

Q. That is addressed to the American President Lines, so you would not have the original, would you?

A. No. They have, I think. He signs about six of them, whatever they ask for.

Mr. Wood: We will show this to counsel and offer it in evidence. It is merely the master's authorization to American President Lines to sign bills of lading.

Mr. Hicks: No objection.

The Court: It will be admitted.

(The carbon copy of letter dated June 2, 1943 above referred to, so offered, was thereupon received in evidence as Defendant's Exhibit J.)

By Mr. Wood:

Q. Now, is that about all there is to getting the ship on her way? Does that about complete your duties?

A. Outside of getting the master and the custom broker together, where he can clear the vessel, and getting the copies of his crew list to the various interested parties in the military, to change from time to time, which is all secret and had to be given to the proper authorities.

Q. Then who gives the master his sailing instructions?

A. His sailing instructions, if he is working for the Army, or the Army has been allocated the ship—

Q. When you say "working for the Army"?

A. I mean if the ship is working for the Army, or at least been allocated to the Army.

Q. That might be a ship for which you were general agent?

A. Oh, yes; rather than being allocated to another general [fol. 190] agent for a Lend Lease cargo. That is one place they used them. If they went to the Army, the Army gave him his instructions.

Q. And some would be allocated to the Navy, would they, or assigned to the Navy?

A. Yes. That was sailing orders. And if it was a berth agent that was handling them, why, usually they sent them to the Navy, and the Port Director had it all, because they are governed entirely according to the security regulations. No one but a military, Army or Navy authority issued any instructions or was supposed to have any knowledge of the route or destination.

Q. Did the Shepard Steamship Company give the masters any instructions?

A. No.

Q. As to where to go with the ship?

A. No.

The Court: It was all a matter of secrecy, wasn't it, so as to protect the ship from hostile craft?

A. That is right.

The Court: If there were any lend lease, or if they were carrying supplies or something to the Army, of course, the fewer people that knew where that ship was going the better chances the ship had of getting to its destination safely. And I suppose oftentimes the master never knew anything about just exactly where he was going until he was at sea.

A. His routing, I believe—not being a master and never having been to a route conference, I believe it was entirely secret, and to be opened at sea only.

The Court: In other words, he would be instructed to get out to sea and then open his instructions?

A. Yes.

By Mr. Wood:

Q. Then did you ever give the master instructions on [fol. 191] how to navigate the ship or how to manage or operate his ship after he got to sea? Did you ever give the master instructions on whether he should sail at eight knots or ten knots, or things of that nature?

A. During the war, of course, it was all a matter of Navy routing; distances, positions, and space and routes.

Q. Now, how about ordering fuel for the vessel? Did the general agent have anything to do with fueling her for her voyage?

A. Yes. That was one of our duties, to see that she was provided—those instructions came from the District Marine Superintendent at San Francisco.

Q. What was his name?

A. George Eggers.

Q. Whom does he work for?

A. The War Shipping Administration.

The Court: Before the war when you selected a master to take a ship at sea, you didn't pretend to tell him how to navigate the boat, did you?

A. The port captain and port engineer were charged with the responsibility then of our equipment, and also the individual there that was most interested—the owner of the vessel—Mr. Shepard himself writes him some very, very

strict letters about the balance of economy between excessive speed and wearing out a ship; very much so.

Q. It was quite frequent, wasn't it, in peace time for steamship companies to issue rather complete instructions to masters covering various phases of navigation, such things as telling him not to sail too close to lee shores, hidden reefs, and things of that sort?

A. Well, that was supposed to go more or less without saying, but I mean the matter of economical operation as between the balance of speed and fuel consumption, and that kind of thing, they most certainly told them.

[fol. 192] Mr. Wood: For the Court's information, I will say that I helped write a rather complete set of instructions for masters in peace time.

Mr. Hicks: That makes Erskine an expert, I guess.

By Mr. Wood:

Q: Then after the ship leaves port what are you busy with?

A. Well, mostly making out—clearing out these bills and getting them back, these invoices, so they can be—we pay all ours; it is all paid from this account in Boston. They ultimately have to be cleared through there.

Q. Just to put it briefly, you have got a large amount of accounting work to do after the vessel has left?

A. Yes, get all these accounts in shape for the auditors, the government auditors, and many operating reports and statistics, and so on, that the War Ship requires in their division of research work.

Q. Now, what would you have to do with a vessel such as the "George Davidson" when she touched at a port out in Australia or New Zealand or Tasmania? What if anything would you have to do with the handling of that vessel in one of those ports?

A. You mean at the time of this voyage?

Q. Let's take the "George Davidson."

A. We had no representation out there whatsoever.

Q. Who would take care of it out there in those ports?

A. In this case the berth agent, I believe, had a list of agents that in some places might be foreign and in other places might not be foreign. In all cases there was a WSA representative there—most always.

Q. In the foreign areas, in military zones?

A. Yes.

The Court: That is on the matter of cargo?

A. What?

The Court: That has to do entirely with the matter of [fol. 193] cargo, doesn't it?

Mr. Wood: Is that limited entirely to cargo?

A. No. That carries—that is an extension of our duties which we are unable to perform in foreign areas.

Mr. Wood: Such things as refueling the ship for further voyage, or replacing members of the crew who have been sick or injured, or obtaining spare parts for some broken down engine, or emergency repairs made in a foreign port.

The Court: Who does that? The berth agent or the master of the ship?

A. Who does it?

The Court: When you get over to Tasmania, for example, supposing the ship's stores are low and they need some more food for the men?

A. That is up to the master to find it.

The Court: The master will find it. If there are any repairs necessary on that ship, the master will arrange for that, won't he?

A. Well, the usual procedure would be, I believe, he would seek out a War Shipping Administration official, if there is one, or the military commandant of the area, because he is under military orders when he is out there in the war zone.

By Mr. Wood:

Q. Do you know whether the War Shipping Administration representatives in those ports or the Army and Navy men when they are in strict military zones would handle those things for the master?

A. Yes.

Q. You know that, don't you? I mean you know that from experience on your own vessels?

A. Yes.

The Court: When a ship in peace time was at sea and gets into some foreign port and runs short of supplies, your [fol. 194] office here isn't there to tell them what to do and how to do it.

153
Mr. Wood: This company didn't run to any foreign ports in peace time. They were an intercoastal company.

The Court: I know, but if they were running in a foreign port.

A. It would be a rare setup if they didn't supply the master with a complete list of foreign agents to use in any place that he might turn in.

The Court: But they looked to the master to get that ship to its destination and back home again, didn't they?

A. Of course. He is always in charge in any case. He is in command of the vessel.

The Court: He was before the war, he was during the war, and likely will continue to be?

A. We hope so. We rather doubt it.

By Mr. Wood:

Q. Now, say the vessel makes her voyage and finally returns to a port in the United States. I think Mr. Settle covered the matter of repairs, and I won't go into that. How about your duties with respect to paying off the crew? What is done with respect to paying off the crew when the vessel finally returns to a United States port?

A. Well, our port auditors go down and get the purser and assist him and the captain in working up the payroll. They work that up first and try to audit overtime against these agreements and all and eventually get the payroll, and it usually takes about two days.

Q. Where does the money come from to pay off the crew?

A. The money comes from this special account, in our case from the Boston City National Bank.

Q. To whom was it sent?

A. Sent to the account of the master, in his name, as John Jones or whatever his name may be.

[fol. 195] The Court: Your company sometimes draws money out of that fund and gives it to the master or to the steward or somebody when they start on a trip, don't they, so he has some money aboard?

A. There are security regulations which provided, as we understand it and interpret it, and still interpret it, on War Shipping Administration vessels that no government money goes out with the ship.

The Court: Whose money does go out with the ship?

A. Nobody's.

The Court: Your own?

A. None.

The Court: How do they give these sailors a little advance? Now this man's bill, for example—he drew quite a bit of cash that was charged to him before he was finally paid off. Where did that money come from?

A. The War Shipping Administration had arrangements with the Army, the War and Navy departments, for transfers of funds from the finance officers in every military area. The master got his funds in foreign areas from those sources.

The Court: I have some personal knowledge of the situation because one of my sons shipped on that boat and knew something about it personally, and I know that the sailors aboard the boat could draw money from time to time during the war period, while sailing on these merchant ships, Liberty ships. Now the master certainly was not using his own spare change to advance this money.

A. I will repeat, your Honor, that any time a master arrives, for instance, in Subic Bay; he has a crew there that he has to keep going. He can go to the finance office of the Army or Navy, or wherever the War Shipping representative was around him, and he can seek them out and he can [fol. 196] get all the funds he needs for advances from them. He signs for that money. Those receipts eventually go back through the accounts and are charged against his voyage account. Then when he gets through in that port he will return and get a receipt for what he returns to the Army or the Navy, and he will leave clean again.

The Court: When he leaves out of the Portland port, on this "Davidson" for example, does the general agent start that master out of this port without a dime?

A. Correct. I will correct myself: Not out of—yes, out of this port. In San Pedro he was again supplied with funds on arrival, sent to his own order. He himself must go to the bank and sign for it. It belongs to the War Shipping Administration.

The Court: Who put the money in there?

A. It is sent from this special account. We send a warrant—

The Court: I know, but the point is, and what I am trying to get at, it seems to me we are kind of quibbling about the

matter of finances. The War Shipping Administration put up all this money into a special account.

A. Correct.

The Court: The Shepard Company drew on this account; isn't that correct?

A. Yes.

The Court: The War Shipping Administration puts up this money that the Shepard Steamship Company carried in a special account. It is War Shipping Administration money.

A. We disburse the bills.

The Court: But you disburse it?

A. We disburse it; correct.

The Court: On your own check. That is a special check on a special fund.

[fol. 197] A. Yes.

The Court: So if the master gets any money out of that fund you give it to him out of that special fund; isn't that true?

A. The distinction is this: That anything that is paid to the crew—anything paid to the crew as payroll on that vessel is the master's disbursement. It is sent to the master's order, a check or wire usually, sent to the master at whatever bank we tell him he can go, and he goes to pick it up. It is not sent to any particular branch house. We only have one War Shipping account, which is in Boston.

The Court: But you send your check or you send your wire to the master?

A. No.

The Court: Drawn on this particular fund?

A. No. In the case of a wire our office—yes, our office writes a check and sends it down there to the bank, sends it to the order of the master.

The Court: To the master. That is what I understood.

By Mr. Wood:

Q. That is in United States ports?

A. Yes.

Q. What you were saying is the master, under the regulations, is not supposed to carry money aboard ship when it is navigated at sea; is that it?

A. That is the instructions we have.

Q. But he could get all the money he needed in any port that he needed it?

A. Yes.

The Court: Could he get money in a port anywhere he wanted to without your O.K. on it?

A. He could as long as there was a War Shipping Ad- [fol. 198] ministration official there. We have had one occasion that I know of of a master coming into a port, a small port, in the Philippines—but this is since the war— where the War Shipping Administration port representative had vacated, and some second lieutenant or something in the Army doubted his authority to give the master funds. They sent us a cable, and we doubted the necessity of our authorization, because it was supposed to come from the War Shipping Administration. We finally got an O.K. from the War Shipping in San Francisco, and he sent the Army an authorization to pay that money.

• • • • •
Cross-examination.

By Mr. Hicks:

Q. Mr. Sanders, who are the licensed deck officers on the ship, as we refer to them in these documents and agreements, and so forth?

A. The licensed deck officers?

Q. Yes.

A. The master, the mates, the chief engineer, the first, second and third. On a Liberty ship there are others farther down. That is it.

Q. We were discussing formerly in the record the situation of the Masters, Mates and Pilots organization with respect to the operations of your company on this coast, and you were good enough to produce from your files the document which I have in my hand and which was not marked for identification, the one under which you said you operated and abided by.

A. The way the War Labor Board—we are not signatory to this one, however, I might point out.

Q. No. But it is now in vogue?

A. Yes, it is a standard form now—no, not now either—because it has been amended; that is, just at a certain par- [fol. 199] ticular point. That is all changed now.

Q. Yes. I simply wanted to identify the document for the purpose of the record, it being the same one that we were discussing.

A. That is my only copy of that. I just use that as a matter of convenience.

Mr. Hicks: May it be agreed that the document which the witness testified to in regard to the Masters, Mates and Pilots, involving National War Labor Board case No. 111-1360-D, and which is dated May 6th, 1944—it was that document which your testimony related to when we were discussing the Masters, Mates and Pilots situation?

A. To be technically correct, the one we are interested in—I think it is the same as that, but, you know, as far as it goes that is just a case or decision—has got a different number on it. The Atlantic Coast group that we were on, it was a different numbered case. It was taken up separately from this, and as a separate case, I think. Maybe not.

Q. Yes, but my point is that you were operating under the terms of this agreement and acquiesced in and acceded to this agreement?

A. In fact, we had a directive from the War Shipping Administration some place in there that tells us when to use that. That is their agreement.

Mr. Hicks: Now may it be stipulated that a transcribed copy from the National War Labor Board reports, being the case number I have designated, may be received in the record?

The Court: Have you any objection, Mr. Wood?

Mr. Wood: No, I haven't. I am a little confused on this thing myself. Shepard is not a party to this one you have here.

Mr. Hicks: True, but the witness—
[fol. 200] The Court: The witness says they worked under that.

Mr. Hicks: They worked under that and abided by its terms, though they were not signatories to it.

The Witness: I say, I used that for reference.

Mr. Wood: All right; with that explanation of the testimony, I have no objection.

Mr. Hicks: Now, may it likewise be stipulated that inasmuch as this agreement which has just been identified as Case No. 111-1360-D of the National War Labor Board provides in subsection (a) on the second page thereof that "The

terms and conditions of employment of licensed deck officers as heretofore specified in Case No. 111-4649-D shall apply in their entirety,"—inasmuch as that clause is contained therein, to make the record complete I ask counsel to stipulate that that case of the National War Labor Board which I last mentioned and described may be inserted in this record, and that we be permitted to supply a copy of that contract and decision for the purpose of this record, and that it may be marked by the reporter as one of our succeeding exhibits.

Mr. Wood: I would just first like to ask the witness if he knows positively whether the agreement that Shepard had had that identical clause in it. You see, this is not a copy of Shepard's agreement. This is the one that he testified that he generally referred to. If he knows that the actual one applicable to the Shepard Steamship Company had this identical clause in it, then I would so stipulate.

Mr. Hicks: I will ask Mr. Sanders.

Mr. Wood: Show him that clause and see if he knows that that is in their contract.

By Mr. Hicks:

Q. I will ask you whether or not your company accepted and operated under the terms of the agreement which you hold in your hand.

[fol. 201] A. At what time are you referring to, what period of time?

Q. I am asking you the period of time under which you did operate under that agreement. You don't have to make it exact. Make it rough.

A: "The effective date of the"—I am quoting here from the effective dates—"The effective date of the foregoing provision"—certain sections have effective dates noted in here as a part of it, and various sections have different effective dates. It says at the bottom, "The effective date of the foregoing provision shall be"—this is the negotiated effective date—"The effective date of the foregoing provision shall be in accordance with the decision and supplemental decision of the National War Labor Board in case No. so and so."

Q. But you operated under it during the effective dates prescribed, didn't you, Mr. Sanders?

The Court: You produced the document. Let's get along. You either operated under it or you didn't. Let's not be technical.

A. We didn't operate under that document whatsoever.

By Mr. Hicks:

Q. Well, you operated under the terms of a document—

A. I don't know. I would have to see the one that has got our name on it before I could answer that question.

Q. You are not familiar with the terms without seeing the one that has your name on it?

A. I don't think there is a man in the world that can keep track of the various changes in all these documents for one year; let alone five years. It is a human impossibility.

Q. You do have a document that is signed by you, or by the Shepard Steamship Company, involving the Masters, Mates and Pilots and their relationships with yourselves as general agents and the unions as the contracting parties?

A. As I mentioned before, these unified standards, certain [fol. 202] standard agreements, were taken up in two groups by the National War Labor Board. That is a matter of history and a matter of record.

Q. I am not arguing with you about it.

A. I am telling you why I don't know, because I can't remember all of that, and I have used that copy simply as reference because—and I have no occasion to have any particular negotiations and arguments over the issues in it, so I don't know. But there is one, and it is a matter of record in the National War Labor Board or the War Shipping Administration, and it has been available ever since to the United States Government, who own and operate the ships. It is just a simple matter of record, and I can't testify that that reads exactly the same as the one that has our name on it, nor who and how it was signed, because it was entirely by direction of the National War Labor Board.

Mr. Hicks: May we stipulate that the two National War Labor Board cases which consists of contracts, and so forth, as shown by the official reports, may be received in the record in this case?

The Court: They will be received.

Mr. Wood: These two here?

Mr. Hicks: That is, Case No. 111-1360-D and Case No. 111-4649-D which I referred to.

Mr. Wood: When you put them in they will show whether Shepard is a party to them or not.

Mr. Hicks: Yes, and they will likewise show the relationship between the unions, on the one hand, and the general agents on the other, including this general agent.

The Court: Very well. They will be admitted.

Mr. Wood: I don't know what they will show.

The Court: You can furnish copies of those.

Mr. Hicks: Is there any objection to their being received? [fol. 203] Mr. Wood: I object to them on the ground that Shepard is not a party to them. If you are going to introduce them they ought to be the one that Shepard is a party to.

Mr. Hicks: Outside of that objection may they be received?

Mr. Wood: Outside of that I have no objection.

The Court: Very well.

(The two cases before the National War Labor Board above referred to, Case No. 111-1360-D and Case No. 111-4649-D, respectively, so offered, were thereupon received in evidence as Plaintiff's Exhibits 12 and 13, copies to be furnished by counsel for the plaintiff.)

The Court: Have you any agreement between Shepard and the Masters?

A. Yes, a standard—for War Shipping, as I have repeatedly said, for handling War Shipping Administration vessels, which is the only thing that we handled, we are in a similar case to this—it may be the same case number, but there are two of those documents there were written. I have seen them. I think we have one in our file in San Francisco.—I am not sure—a standard form of agreement applying to WSA vessels. That is all we handled and that is all we have. It is a matter of record in the National War Labor Board. That is what it is; that is the agreement we go by.

By Mr. Hicks:

Q. That is the agreement that you accepted and signed up and agreed to go by, too, the one you are talking about, after the War Labor Board had handed down its directive order; right?

A. How far that has gone I don't know. The effective date by the War Labor Board—what does it say there as to

when it shall be effective? It says in the back of that one. I think it is about the same thing.

[fol. 204] Q. Just a second. Did you want to identify some dates there?

A. The answer is here: "The effective date of the foregoing provisions"—that is at the end of the document—"shall be in accordance with the decision and supplemental decisions of the National War Labor Board in Case No." —now, I would have to have all those supplemental decisions in order to tell you. That came out afterwards, so I wouldn't know.

Q. So far as you know, during the entire period that Shepard Steamship Company was operating as general agent there were no changes in respect to the relationships between the masters and the general agent and the unions? I mean in operating arrangements between them, their status. Do you follow my question?

A. You mean during this War Shipping Administration agency?

Q. Yes. The masters had the same status, we will say, to your knowledge in 1943 that they had in 1944 and 1945, the same duties, the same legal status, the same union status, and the same status with the company and with the War Shipping Administration that they had throughout. There was no change. That is my point.

A. Between our previous agreement?

Q. Yes.

A. One main change was that I believe that our previous agreements with the Masters, Mates and Pilots, the masters' wages were open to negotiations and not stipulated in the agreement.

Q. Yes.

A. And the War Shipping Administration agreements, as applied to War Shipping Administration vessels, had a specified wage, monthly wage, for the master in accordance with the size of the ship.

Q. And that wage was established through negotiations, to your knowledge, between the Masters, Mates and Pilots union, on the one hand, and the general agent operating companies on the other?

A. You mean the standard wage in there?

[fol. 205] Q. Yes, and I include the wage of the master.

A. No.

Q. You say that it was not a matter of negotiations?

A. No. To my knowledge, I can't see the logic of it if it was. The master operating under our previous one got, I believe, \$418.75, which was based on their previous—that is, of course, our agreement had no wage in there for a master, I don't think. We paid our masters, and the War Emergency, of course, added their percentage that was handed down by the War Emergency Board. That was not negotiated. That brought it to a figure of \$418.75, I believe. The first issue of standards that I recall put the wages of a master at \$415.00, and consequently any new master subsequent to that that we procured for War Shipping, the War Shipping Administration advised us we must pay not more than \$415.00 a month. So why we should negotiate anything less I don't know.

Q. Now, I am not talking about negotiating anything less, but you are not testifying, are you, that these wages that were paid the masters from time to time—you are not saying that those wages were not negotiated by the union, on the one hand, and the steamship operators on the other? You don't mean to suggest that, do you, Mr. Sanders?

A. You are talking about our other agreement, the first one?

Q. I am talking about the master's wages from '43 on through, '43, '44, '45 and '46, and I am suggesting to you that they were negotiated by the union and the general agents.

A. Our Masters, Mates and Pilots agreement in vogue in '43, the masters' wages were open only to negotiation between a master and the owner. If we didn't own any ships—well, we owned one, I think, at that time.

[fol. 206] The Court: You mean the shipping companies like Shepard?

A. Our agreement that we had was an open question. It was in almost all Masters, Mates and Pilots agreements that I know of. Of course, I am not absolutely positive only from discussing this with many masters that I have known over a good many years. That is one question that the Masters, Mates and Pilots very seldom insisted on negotiating into an agreement. In the Masters, Mates and Pilots agreements the master is open to make his own deal, until they brought this standardized business in. I don't know what the Pacific American was prior to that time, but I think that in the Pacific American Shipowners Association agreement with the Masters, Mates and Pilots prior to this case

handed down you will find a dotted line opposite the master's wages. I am not sure of that, but I think—

Mr. Hicks: I think I have covered the questions from this witness, and I simply at this stage of the record, your Honor, want to direct your attention to Paragraph 3 of the National War Labor Board Case No. 111-1360-D, involving the Masters, Mates and Pilots, which we have been discussing here, which provides: "Nothing in this agreement shall prevent the general agent from discharging any licensed deck officer." And that includes the master, as the witness testified. That is all.

The Court. Well, that is in keeping with the testimony of Mr. Settle, of the War Shipping Administration.

Redirect examination.

By Mr. Wood:

Q. Who was it that set standardized wages for masters?

Mr. Hicks: If you know.

A. Who was it?

By Mr. Wood:

Q. Do you know how that was accomplished? You said [fol. 207] that previously it was a matter of negotiations and later the wages of the master were standardized. Do you know who standardized it? Who established those wages, or that wage scale for masters?

A. Your question assumes that it was standardized. I don't know.

Q. Did I understand you correctly to say that the War Shipping Administration—

A. I believe it was there in the National War Labor Board—these cases were thrown into arbitration. There were cases filed with the War Shipping Administration with all general agents everywhere. We went through the machinery of putting these cases before the National War Labor Board, and they handed down a decision. It was an arbitrated agreement that was arbitrated and handed down. I wasn't there—

Q. Do you know what part the War Shipping Administration took in it?

The Court: That is, do you know of your own personal knowledge?

Q. Do you know to what extent the War Shipping Administration participated in that?

Mr. Hicks: We object to that question unless the witness is prepared to say that he attended the conferences where the War Shipping Administration was present, attending and participating in them.

Mr. Peterson: In War Labor Board hearings.

Mr. Wood: I think he would know from official communications from the War Shipping Administration.

Mr. Hicks: If that is true, the official communications would be the best evidence.

Mr. Wood: Well, we are not getting very far.

The Court: No.

Mr. Wood: I think it is all in here, anyway, I will direct [fol. 208] the Court's attention at this time to the opening paragraph of this agreement.

The Court: Is that the one that Mr. Hicks offered in evidence?

Mr. Hicks: That is already in.

Mr. Wood: Precisely. It is one that he offered in evidence to which Shepard is not a party, and which reads: "The above designated dispute, 111-1360-D, involving licensed deck officers employed on any ships owned by or chartered under General Agency agreements to the War Shipping Administration on the Pacific Coast, and operating under collective agreements with the national organization of Masters, Mates and Pilots of America, Local No. 8, were certified to the Maritime War Emergency Board on February 3rd, 1943, and to the National War Labor Board on April 29, 1943. The National War Labor Board has been advised by the War Shipping Administration that it will accept the Board's disposition of this matter. Hearings have been held by the Board and its agent, the War Shipping Panel." Do you know what the War Shipping Panel was?

A. Not specifically, no.

Mr. Wood: I won't take time to read this. It is in evidence and you can refer to it. That is all.

(Witness excused.)

COLLOQUY

Mr. Wood: There are two minor matters I overlooked in the rush Friday night. There are two minor bits of evidence that we wanted to put in on the issue of employment which in the rush to wind up Friday evening I neglected to put in.

The Court: What are they?

Mr. Wood: One was the printed P & I policy, which the government wrote with underwriters covering these vessels. [fol. 209] It is found in the War Shipping Administration's compilation of standard contract forms. The only purpose for which I wish to offer that is to show the limitations on the general agents in the settlement of claims.

Mr. Wood: The other thing I had, there has been received in evidence that statement of the wage account of Mr. Fink, and I wanted to have Captain Dopp—Mr. Sanders has gone, but Captain Dopp is equally familiar with that phase of payment to members of the crew—get on the stand and explain in this respect—it is very similar to the Hust case, too, if you read the record there—that the form used in that case was one of the forms left over from Shepard's private steamship operations, and they were still using them during the war, and they used it for Mr. Fink, and that it was a form that was printed when they were a private steamship company and it was in use then and carried over from that, and that subsequently they used this new form. And I have one of the forms here, Seaman's Wage Account statement, which they put into use afterwards. Concededly that is not the form that was used in the Fink case, but we simply wanted to offer that in explanation or in connection with the explanation of the form that was used in the employment of Mr. Fink.

Mr. Hicks: We will object to this on the ground it is neither competent nor relevant, and has no bearing on the issues here; it is a form that was used subsequently, and they changed these formal documents subsequent to the accident. I can't see how that would be pertinent here.

The Court: Well, I agree with you on that.

Mr. Wood: It is only in explanation of the form that you offered, to show that they didn't—

[fol. 210] Mr. Hicks: I understand your theory on that, but the best evidence of that would be

The Court: I will sustain the objection to the admission of this evidence, but it can be marked for identification as a part of the record. You have no objection to its being offered at this time?

Mr. Hicks: Not at all.

(The form referred to, entitled "Seaman's Wage Account," was thereupon marked Defendant's Exhibit K for identification.)

Mr. Wood: As part of an offer of proof can I call Captain Dopp, or do you waive anything as to its identification?

Mr. Hicks: Yes, I waive that.

Mr. Wood: Now I want to offer this exhibit as showing the War Shipping Administration's limitations upon the general agent with respect to the settlement of such claims, because this Wartime P & I policy which was written between the War Shipping Administration and all of the insurance companies in this field had a clause providing for the settlement of claims by general agents and set specific limits as to general agents' authority for the settlement of such claims.

The Court: Very well. It will be admitted.

(The form of policy above referred to, so offered, was thereupon received in evidence as Defendant's Exhibit L, copy to be furnished by counsel for the defendant.)

[fol. 210 1/2]

MOTION FOR NONSUIT

Mr. Wood: The defendant at this time moves for an involuntary nonsuit on two grounds: On the first ground that the evidence shows as a matter of law that the plaintiff was not an employee of defendant within the meaning of the terms as used in the Jones Act, and therefore plaintiff has no right to bring this action against the defendant Shepard Steamship Company, which is merely a general agent acting for the War Shipping Administration; on the ground that

War Shipping Administration was the real employer of plaintiff under the meaning of the Jones Act, and therefore the plaintiff should bring this action against the War Shipping Administration pursuant to the Suits in Admiralty Act and Public Law 17.

The second ground upon which defendant moves for a judgment of involuntary nonsuit is that on plaintiff's own case, established by the evidence of plaintiff's own witnesses, there has been no negligence proven, no substantial evidence of negligence to go to the jury.

DECISION ON MOTION FOR NONSUIT

The Court: It was the consensus of opinion of all parties including the Court, that the legal issue presented must be [fol. 211] decided largely in the light of the recent decision of the United States Supreme Court in the case of Hust vs. Moore-McCormack Lines, Inc. (No. 625, October Term of Supreme Court of the United States, 1945—decided June 10, 1946).

This Court has read and considered the original pleadings in the Hust case, the instructions of Judge Hawkins to the jury given on the original trial, the able and very exhaustive opinion of Mr. Justice Lusk in the Supreme Court of Oregon, the Petition to the United States Supreme Court for a Writ of Certiorari, together with all written briefs filed in the Supreme Court of the United States by counsel for the respective parties, as well as briefs filed by Amiens Curiae, and of course the majority, especially concurring, and dissenting opinions of the United States Supreme Court. This Court has also read and considered the Congressional Report having to do with the Clarification Act, which Act became effective March 24, 1943.

Regardless of what the conclusions of this Court might be were this a case of first impression before the Court, it seems to me that the question has now been finally determined by the Supreme Court of the United States in the Hust case, and that there isn't anything this Court can do but apply the principles laid down in that case to the issues here.

In the Hust case, the defendant was a "General Agent" operating under a General Agency Agreement entered into between defendant and the War Shipping Administration. And the same is true in this case.

114
Though it seems to this Court that this agreement is largely free from ambiguity, most courts have proceeded upon the theory that in some of its terms it is ambiguous, and hence have resorted to a consideration of some evidence aliunde.

[fol. 212] Under the Jones Act, it is universally agreed that a seaman in order to sue any given defendant must, as a condition to successfully maintaining such action, establish the relationship of employer and employee between himself and such defendant. And whether or not such relationship exists is to be determined by the common law tests (Mr. Justice Lusk in *Hust vs. Moore-McCormack Lines, Inc.*, 176 Oregon 669). The principal and controlling test at common law is whether the alleged employer has the right to control and direct the alleged employee in the performance of the details of the work. Other tests are also employed in determining the question. One of such tests is the right of the alleged employer to hire and to discharge the alleged employee.

Where there is a written contract between parties, the status of the parties must ordinarily be determined from the provisions of such contract. If the contract is ambiguous in any of its terms, resort may then be had to other evidence which may throw light upon the ambiguity.

Mr. Justice Douglas in his specially concurring opinion in the *Hust* case recognized this rule: "The question whether exclusive possession and management of the vessel have been transferred to the charterer turns on the facts of each case—a construction of the agreement between the parties, and the conduct of the parties under the arrangement," Stated Justice Douglas. But in arriving at his ultimate conclusion that the defendant in the *Hust* case was an "owner pro hac vice," Justice Douglas did so by construing the provisions of the General Agency Agreement, and not by a consideration of other evidence in the record.

In this, as in the *Hust* case, we must determine the status of defendant under the General Agency Agreement, in order [fol. 213] to ascertain whether defendant was the "employer" within the meaning of the Jones Act. The status of plaintiff as an "employee" is not determined by a consideration of the terms of this agreement between other parties. He is an "employee," but the primary question is: Who is his employer? Is it the defendant, or is it the War Shipping Administration? That must necessarily be deter-

mined by the contract between the defendant and the WSA.

In construing this General Agency Agreement, the Supreme Court of Oregon, as well as the United States Supreme Court, considered the same in the light of the overall national and international picture existing at the time it was entered into. We were in a war, and it was absolutely essential to our war effort that all shipping be placed at the disposal of the government and operated as a unit. At the same time, it was just as essential that the world-wide facilities of private shipping interests be utilized to the fullest extent possible. And clearly, every law, every directive, every step taken was in the direction of permitting the established shipping interests to carry on as operators, surrendering only such portions of their ordinary peace-time rights, powers, and practices as were absolutely essential to military security.

The provision of the General Agency Agreement that the Master of the ship selected by the defendant and approved by the War Shipping Administration should be considered an agent and employee of the United States was a necessary requirement, when the nature of all war-time shipping is considered. All cargo carried was designated by the War Shipping Administration, and practically all of it was destined for military use. Necessarily, the destination of such cargo, the route to be followed by the vessel, the speed at which such vessel should travel, and a number of other [fol. 214] things in connection with operation of the ship, had to be subject to military control. To the extent necessary for security, the General Agent surrendered control, but only to that extent. In all other respects, the General Agent operated the vessel with all the incidents of such operations.

Ordinarily, the Master of a ship is in supreme command. At sea his word is law. But under war conditions, it was necessary that the Master be subject to military orders and directions. Hence, the propriety and necessity of designating him an agent and employee of the United States Government, and therefore subject to the orders and directions of the representatives of the government, particularly the Army and Navy.

But this designation of the Master did not necessarily mean that at the same time he was not also the agent of the defendant to carry out and perform the duties of the defendant in connection with the operation of the ship.

Under the Agency Agreement, as well as in fact, the defendant hired the Master and all the crew, including the plaintiff. The War Shipping Administration had no rights in this respect, except that of approval or rejection of the men so hired. According to Mr. Settle of the War Shipping Administration, the defendant had the right and power of discharge, and even aside from this oral testimony, such right and power is implied from the nature and terms of the Agency Agreement itself.

It seems to this Court that the mere fact that the defendant surrendered to the United States Government in the interests of military security some of its peace-time rights of control as to the details of the work, in no way affected its status as the employer of the ship's crew. It was the actual operator of the vessel, the actual employer, to all intents and purposes, an owner *pro hac vice* as suggested [fol. 215] by Mr. Justice Douglas in the Hust case.

Another significant bit of evidence offered on this trial before the Court is that having to do with the form filled out by a Master selected by the ship operator to take charge of the vessel. After being selected by the General Agent, the Master is required to fill out a form giving his name, age, residence, experience, etc., and this form is sent to the War Shipping Administration. If the WSA approves the selection, the Master takes charge of the ship. When selected to take charge of another ship, a transfer form is filled out by the Master and submitted to the WSA. If anything more than a mere technical employee of the United States, why the necessity of the General Agent again selecting the Master and having him submit a transfer form? Why shouldn't the WSA act directly by merely assigning or transferring him to another ship? The answer is that the Master is only technically an agent and employee of the United States, and in every instance where a ship is to be manned, the manning thereof is the primary responsibility of the General Agent.

The only essential difference between the situation in the instant case and that present in the Hust case is that the Clarification Act went into effect after the injuries complained of in the Hust case, whereas in this case it was in effect when the alleged injuries occurred. From this circumstances, it is argued that the Hust case is not decisive of the issue now before the Court.

Defendant contends that the decision in the Hust case

applies only to those cases arising prior to the enactment of the Clarification Act. Its argument is based largely upon the following statement found in the opinion of Mr. Justice Rutledge, speaking for the majority of the Court: "We need not determine in this case whether prospectively the Clarification Act affected rights of the seaman against the operating agent and others, or simply made sure that his [fol. 216] rights were enforceable against the Government. We make no suggestion in that respect. For this case, on the facts, is not governed by the statute's prospective operation."

Though Justice Rutledge made this statement, nevertheless a careful consideration of the entire reasoning of the opinion, as well as a consideration of the specially concurring opinion written by Mr. Justice Douglas, leads this Court to the conclusion that the Supreme Court of the United States has in fact determined that question, and in favor of the prospective operation of the Clarification Act.

It is this Court's conclusion that under the Hust decision, all seamen employed on a vessel operated by a steamship company under a General Agency Agreement such as is involved here, are employees of such General Agent; and may proceed at law and have a jury trial in all cases such as this, pursuant to the provisions of the Jones Act.

After a careful consideration of the evidence offered on this hearing, and having in mind all facts and circumstances existing at the time of and surrounding the execution of the General Agency agreement, and independently of the Hust decision, this Court would arrive at the same conclusions.

It follows, therefore, that the Court finds as a matter of law that the plaintiff at the time of the alleged injuries was an employee of the defendant within the meaning of the Jones Act, and, therefore, has the right to maintain this action for damages, and that will be the ruling of the Court.

To this ruling the Court allows the defendant an exception.

And, pursuant to the understanding between Court and counsel, it is also ordered that the entire record as made before the Court out of the presence and hearing of the [fol. 247] jury, including this statement of the Court, shall be incorporated into and made a part of the record on this trial before the jury, to all intents and purposes as though

the same had occurred and taken place after the selection of the present jury and in its presence and hearing.

SUBMISSION OF TESTIMONY ON QUESTIONS OF NEGLIGENCE AND EXTENT OF INJURY

"Thereupon a jury was convened and plaintiff submitted testimony on the questions of negligence and extent of injury as follows:

"That on June 8, 1943, plaintiff, a man then 35 years of age and in good health, signed articles at Portland, Oregon, as an ablebodied seaman on the S. S. George Davidson; that he sailed in this capacity with the vessel from Portland about June 15, 1943; that the voyage of the S. S. George Davidson was to San Pedro, California, thence to Hobart, Tasmania, thence to Bombay, to Cochin, India, to Colombo, Ceylon, to Freemantle, Australia, to Panama Canal Zone, to New York City, to Baltimore, where the crew was paid off;

"That at about 7:30 P. M., on August 2, 1943, while said vessel was at sea two days out of the port of Hobart, Tasmania, plaintiff was ordered by the boatswain on said vessel to dump overboard the contents of several garbage cans; that other seamen were then and there available to assist in said task, but were not ordered to do so;

"That the ship's garbage was disposed of by dumping it overboard; that this had to be done at dusk or after dark so as not to leave a trail for enemy submarines; that the garbage was contained in galvanized garbage cans about 3½ feet high and about 20 inches in diameter, with handles on each side; that on the S. S. George Davidson the garbage was emptied daily while at sea; that the duty of emptying the garbage was rotated among the various crew members and [fol. 218] one hour overtime wages was paid the crew member who performed the task;

"That on some Liberty ships which are equipped with a garbage chute one man usually dumps the garbage unassisted; that on other Liberty ships not equipped with a garbage chute sometimes one man performs the task and sometimes two men, depending upon whether the garbage cans to be emptied were full;

"That earlier in the voyage of the S. S. George Davidson and while the vessel was at sea after having departed from

the United States, the ship's delegate, who is a member of the unlicensed crew elected by the crew to handle any grievances of the crew with the ship's officers, was asked by the crew to talk to the master about the procedure of dumping the garbage; that the delegate complained to the master that the garbage cans were too heavy for one man to lift over the rail and asked that either the garbage be lightened by using more cans and not filling them so full, or that a "Handy-Billy" be rigged, or that the master permit two men to handle the garbage; that the master said that one man should dump the garbage, but that later a device called a "Handy-Billy" was rigged up, which consisted of one large empty oil drum used as a garbage can rigged over the side of the ship and which could be emptied by one man merely by untying the rope that held it; that when garbage accumulated in excess of what could be accommodated by the "Handy-Billy" it was placed in additional garbage cans as before which had to be dumped over the rail; that the master told the steward's department not to fill the garbage cans so full, but the steward's department failed to continue to abide by those directions and sometimes filled the additional cans full; that no authorization was ever given by the master for two men to dump the garbage;

[fol. 219] "That on the night of August 2, 1943, when plaintiff was told by the boatswain that it was his turn to dump the garbage, there were several full garbage cans, due to the garbage having accumulated while the vessel was in the port of Hobart, Tasmania; that plaintiff, in carrying out the order of the boatswain, attempted to lift a garbage can in order to dump the contents over the rail of the ship; that the garbage can weighed in excess of 150 pounds and was large and bulky in size, and there was a heavy sea running at the time and the deck was wet and the ship was rolling and pitching heavily; that as plaintiff was lifting said can, a sea rolled the ship and threw him off balance and threw the can back against him and his back gave way and he dropped the can and felt a severe pain in his back and had to be assisted back to his room, and that plaintiff remained in bed for many days during the voyage and suffered intermittent pain and disability to and including the time of trial, and that plaintiff, as a result of said accident, sustained a mild chronic back sprain of the lower back;

"After plaintiff rested his case, defendant moved for an involuntary nonsuit.";

The Court: As to the first ground stated, let the record show that the Court still has in mind the entire record made upon the hearing before the Court and by stipulation made a part of this record, and adheres to its former ruling, denying the motion on that ground for the reason that the Court feels, under the law and the facts, that the defendant was at least an owner pro hac vice, and therefore responsible to plaintiff as an employer under the Jones Act.

As to the second ground urged, if occurs to the Court that the argument of counsel would be properly addressed to the jury as a matter of fact, and it does present a question of fact rather than a question of law. Though it is true that the plaintiff testified he was notified by the boatswain [fol. 220] that it was his turn to remove the garbage, that might well be understood and taken as an order, considering the nature of the business in which plaintiff was engaged, and the fact that they were at sea. Contributory negligence on the part of the plaintiff is not a defense and is not even pleaded in this case in mitigation of damages. There might be a question for submission to the jury whether the master—and in that respect I refer to the employer—owed a duty to the plaintiff to arrange for two men at all times to empty garbage under the circumstances existing here. If that was the duty of the employer, then a failure to perform that duty would be negligence on the part of the employer.

The Court feels that there is a question of fact here for the jury to determine, and therefore on the second ground urged the motion for an involuntary nonsuit will be denied and the defendant will be allowed an exception to the rulings of the Court.

"Thereupon defendant submitted its case on the question of negligence and extent of injuries."

JOHN W. DOPP was thereupon produced as a witness in behalf of the defendant herein and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wood.:

Q. Tell the jury your full name, Captain.

A. John W. Dopp.

Q. Where do you reside?

A. My permanent address here on the Coast is San Francisco.

Q. But you are spending a good deal of time in Portland now, are you?

A. The last four and a half months I have been up here [fol. 221] in the Northwest because all of our ships have been coming in here.

Q. What has been your occupation?

A. Well, I have been following the sea for the last twenty-eight years.

Q. How old are you, Captain Dopp?

A. Forty-seven.

Q. What license do you hold for following the sea?

A. Third issue of master's license.

Q. Just describe the arrangement of the officers on a ship, who they are and what the complement of the crew is.

A. Well, the officers, each one has to have a license. Of course, that was waived during wartime. There is normally the master, chief mate, second mate, third mate, and some of the ships are carrying four mates, and then you carry a junior third mate.

Q. Now Captain, what are you now working as?

A. Port captain for the Shepard Steamship Company on the Pacific Coast.

Q. About how long have you been engaged in that occupation?

A. Since June of 1944.

Q. Who is the owner of the "George Davidson"?

A. The United States of America.

182
Q. And where was the ship built?

A. In Portland Oregon.

Q. At what shipyard, do you know?

A. Oregon Ship.

Q. Do you know who had the ship built?

A. The Maritime Commission.

Q. Do you know who designed that type of ship?

A. I think it is Gibson—it is on the front of those blueprints that you have there.

[fol. 222] Q. I mean did Shepard Steamship Company have anything to do with the design?

A. No.

Q. Now as I understand it, the Shepard Steamship Company were general agents?

A. Yes.

Q. Whom were they general agents for?

A. The War Shipping Administration or the United States Government.

Q. This was a new ship, was it; the "George Davidson"?

A. Yes, it was. We took it when it was new; that is, after it was completed at Oregon Ship it was given to us on a general agency agreement.

The Court: It was given "to us." Who do you mean?

A. The Shepard Steamship Company.

The Court: Very well.

A. It was allocated to the Shepard Steamship Company.

The Court: That is the defendant?

A. Yes.

The Court: Very well.

By Mr. Wood:

Q. So you or the Shepard Steamship Company then rendered service for the United States Government in connection with the operation of the ship?

A. That is right.

(Thereupon the Court and counsel retired to the Court's chambers and the following proceedings were had out of the presence and hearing of the jury):

DEFENDANT'S MOTION FOR DIRECTED VERDICT

Mr. Wood: The defendant moves the Court for a directed verdict in favor of the defendant on the following grounds:

1. That the evidence shows as a matter of law that plaintiff [fol. 223] was not an employee of the defendant within the meaning of the terms "employer" and "employee" used in the Jones Act, and that therefore the plaintiff has no right to maintain a suit under the Jones Act against this defendant.
2. On the ground that this defendant was not an employer within the meaning of the Jones Act of the plaintiff, and therefore plaintiff has no right to maintain this suit under the Jones Act against this defendant.
3. On the ground that there is no substantial evidence of defendant's negligence to go to the jury, since plaintiff's own evidence shows that there was an arrangement for members of the crew to assist each other in the emptying of the garbage, and the plaintiff made no request to the ship's officers or the boatswain or to the union delegate for additional help when it became his turn to empty the garbage on the day of the injury.

The Court: The motion is denied and exception allowed.

* * * * *

INSTRUCTIONS OF THE COURT TO THE JURY

The Court: Members of the Jury, you have heard the evidence in this case, and it now becomes the duty of the Court to instruct you as to the law applicable to this situation.

* * * * *

In Paragraph I of the amended complaint the plaintiff sets forth the fact that the defendant is a corporation, and that on the 2nd day of August, 1943, the defendant was engaged in the control, navigation, management and operation and had in its possession certain merchant steamships operated in coastwise and foreign trade and commerce, and particularly on said date was in possession of, controlled, navigated, managed and operated a certain steamship known as the "SS George Davidson," and was responsible for [fol. 224] maintaining said steamship in proper repair and for equipping said vessel.

This Paragraph I of the complaint is denied by the defendant, except the part of it which alleges that the defendant is a corporation and has an office in Portland, Oregon. Now, the denial of the defendant of that particular allegation simply raises a question of law, and the Court has decided that question of law, and the allegation in the complaint and the denial raises no question of fact for the jury to determine and therefore you need not concern yourselves with the allegations of Paragraph I of the complaint. The Court decides as a matter of law, and so instructs you, that at the time of the alleged injuries the plaintiff was an employee of the defendant within the meaning of the law under which this case is being prosecuted.

Now, in Paragraph VI there is just a formal allegation that the plaintiff brings this action under what is known as the Merchant Marine Act of 1920, Section 33, commonly known as the Jones Act, and he brings it in this county with a right of trial by jury. The Court has ruled as a matter of law that plaintiff has a right to prosecute the action under the Jones Act in this court before a jury, so there is no issue for you to determine upon the allegations of Paragraph VI of the complaint.

Now, as I instructed you a moment ago, this action is brought under a law of the United States commonly known as the Jones Act, being Section 33 of the Merchant Marine Act of 1920, and which makes applicable to actions of this kind the law applying to railroad employees under the Federal Railroad Employees Act. I instruct you that in cases of employment requiring more than one worker to act in concert, it is the duty of the employer to provide a sufficient force to enable his employees to accomplish the [fol. 225] work assigned to them with reasonable safety to themselves, and if an injury results to an employee by reason of insufficiency in the number of his co-workers, he is entitled to maintain an action against his employer for any damages occasioned thereby.

Therefore, if in this case you find from a preponderance of satisfactory evidence that the employer, namely, the defendant, did not exercise reasonable and ordinary care

and prudence in assigning the number of employees which you find was actually necessary for safely doing the tasks required of plaintiff, and if you further find that the plaintiff was injured as a direct and proximate result of the defendant's failure in that regard, then the defendant in such event would be guilty of negligence and would be liable to the plaintiff for any injuries proximately caused thereby.

You are also instructed that the officers of the ship, including the captain, mates, and boatswain, were agents of defendant for the purpose involved in this case, and that any and all orders or directions given by such officers to seamen in regard to the disposal of garbage were therefore binding upon the defendant corporation, to the same effect as though given directly by the defendant. In other words, the officers were representatives of the defendant aboard ship, and if they were in any way guilty of negligence such negligence would be imputed to the employer and the employer would be responsible therefor.

Mr. Wood. The defendant excepts, your Honor, to the Court's instruction that the defendant was the employer of the plaintiff in this action, and defendant excepts—

The Court: Let me see if I can help you out on that. The Court allows the defendant an exception, first, to the Court [fol. 226] submitting this case to the jury at all. The Court also allows an exception to the defendant for each and every instruction given by the Court to the effect that the plaintiff was an employee of the defendant.

Mr. Wood: Thank you, your Honor. The defendant also excepts to the instruction that the captain, mates and boatswain were agents of the defendant. Your Honor probably intended to include those.

The Court: Yes. You may have an exception to that instruction. That is one of the requested instructions of the plaintiff, but I would have given it anyway, so you may have an exception to that. That is in keeping with your general theory in this case, and I want you to have an exception to everything that is in keeping with your legal theory in the case.

Mr. Wood: The defendant excepts to the instruction on the duty of the defendant to assign men to the work.

The Court: That is one of the requested instructions.

Mr. Wood: That was one of plaintiff's requested instructions.

The Court: You may have an exception.

Mr. Wood: It went on with an example of its application to this case.

The Court: I understand. You may have an exception.

[fol. 227]

[File endorsement omitted]

IN THE SUPREME COURT OF OREGON

[Title omitted]

PRAECLPICE FOR TRANSCRIPT OF RECORD—Filed August 25, 1948

To the Clerk of the above-entitled Court:

In order to enable plaintiff-respondent to apply for a writ of certiorari from the Supreme Court of the United States, it is respectfully requested that a transcript of the record of this cause be prepared, duly certified and authenticated, consisting of the following documents and portions of said record, showing the dates thereof:

1. First Amended Complaint;
2. Answer to First Amended Complaint;
3. Verdict;
4. Judgment of the Circuit Court of the State of Oregon for Multnomah County;
5. Motion for Judgment notwithstanding the Verdict, omitting the Alternative Motion for a New Trial and omitting the attached Affidavit of Erskine B. Wood, attached thereto (See Abstract, pages 10, 11, and first paragraph page 12);
6. Order denying the foregoing motions;
7. Opinion of the Circuit Court of the State of Oregon, dated October 5, 1946, omitting from page 2, beginning with the third paragraph (Abstract, p. 24, l. 11), to, but not omitting, the last paragraph of said opinion;
8. Notice of Appeal and Proof of Service thereof;
- [fols. 228-231] 9. The Undertaking on Appeal shall be omitted, but a notation shall be included that such an undertaking was filed;

10. First Assignment of Error from Appellant's Brief;
11. Opinion of Oregon Supreme Court reversing judgment;
12. Petition for Rehearing;
13. Opinion of Oregon Supreme Court denying Petition for Rehearing;
14. Final Judgment and Mandate issued thereon by the Oregon Supreme Court;
15. Order Staying Execution and Enforcement of Judgment and Mandate;
16. Bill of Exceptions, including:
 - (a) Photostatic or otherwise certified copies of the following exhibits:

Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, and Defendant's Exhibits A, B, C, D, E, F, G, H, I, J, K and L, subject to the stipulation attached hereto;
 - (b) The following portions of the Transcript of Testimony:

* * * * *

[fol. 232] 17. This Praeceipe and the appended Stipulation; and

18. Certificate of the Clerk of the Supreme Court of the State of Oregon.

Dated this 23rd day of August 1948.

Thomas H. Tongue, III, of Attorneys for Plaintiff-Respondent.

STIPULATION

It is stipulated that testimony relating to the issues of negligence and extent of injuries may be omitted and that the foregoing narrative statement may be inserted in lieu of plaintiff's testimony on said issues, and that there was sufficient evidence of damages and extent of injuries to sustain a verdict in an amount of \$9,000.00, the amount of the verdict entered herein.

It is further stipulated that, in view of the difficulty of preparing or securing copies of Plaintiff's Exhibits Nos. 1, 5, 6, 7, 8, 9, 10, 12 and 13, and Defendant's Exhibit No. A, the original copies of said exhibits may be included in [fol. 233] preparing the record of said cause in lieu of copies of said exhibits.

It is further stipulated that the foregoing designated portions of the record in this cause shall, subject to the reservation below, constitute the record on review, and that the omitted portions of the record have, as counsel are now advised, no bearing upon the issues to be presented upon the application for writ of certiorari; but this shall not preclude either counsel from suggesting a diminution of the record should any of said portions, in the opinion of counsel, become material.

Thomas H. Tongue, III, Of Attorneys for Plaintiff-Respondent.

Erskine B. Wood, Of Attorneys for Defendant-Appellant.

Service of a true copy of the foregoing praecipe and stipulation is accepted this 24th day of August, 1948.

Erskine B. Wood, Of Attorneys for Defendant-Appellant.

[fol. 234] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 235-236] DEFENDANT'S EXHIBIT "C"

War Shipping Administration, Washington

May 25, 1942.

Operations Regulation No. 1

Pertaining to Service Agreement for Vessels of Which the War Shipping Administration Is Owner or Owner Pro Hac Vice

Policy with Respect to Seagoing Personnel

Attached are copies of the following:

Statement of Policy dated Washington May 4, signed by the War Shipping Administration by representatives of the Master-Mates & Pilots of America, and the National Marine Engineers' Beneficial Association.

Statement of Policy dated Washington May 4, signed by the War Shipping Administration and by representatives of the Sailors Union of the Pacific, Marine Firemen, Oilers,

Article 3D. Where the Agent or General Agent and the Berth Sub-Agent both provide their own facilities in the United States port of loading or discharge, the duties provided in Article 3B shall be performed as directed by the United States.

Article 3E. In all cases, the Agent or General Agent shall:

- (a) Order and pay for fuel after consultation with the Berth Sub-Agent, and follow such instructions with regard thereto as shall be issued by the United States from time to time;
- (b) Make all necessary arrangements for transit of canals, including payment of canal tolls.

Article 3F. The Berth Sub-Agent agrees, without prejudice to its rights under the provisions of Articles 8 and 16 hereof, to:

- (a) Perform the duties required to be performed by it hereunder in an economical and efficient manner, and exercise due diligence to protect and safeguard the interests of the Agent or General Agent and the United States in all respects and to avoid loss and damage of every nature to the Agent or General Agent and to the United States;

[fol. 274] (b) Exercise due diligence to see that all Bills of Lading are properly issued, all wharf receipts for freight are non-negotiable and, where required, a freight contract or permit is issued for each shipment;

- (c) Furnish and maintain during the period of this Agreement, at its own expense, a bond with sufficient surety, in such amount as the United States shall determine, such bond to be approved by the United States as to both sufficiency of surety or sureties and form, and to be conditioned upon the due and faithful performance of all and singular the covenants and agreements of the Berth Sub-Agent contained in this Agreement, including, without limitation of the foregoing, the condition faithfully to account to the United States through the Agent or General Agent for all funds collected and disbursed and funds and property received by the Berth Sub-Agent or its agents. The Berth Sub-Agent may, in lieu of furnishing such bond, pledge

Watertenders & Wipers Association, Seafarers International Union and the Marine Cooks & Stewards Association.

Letter dated May 8 addressed to Mr. Joseph Curren, President of the National Maritime Union of America by Captain Edward Macauley.

Statement of Policy dated Washington May 12, signed by the War Shipping Administration and by the National Maritime Union.

All General Agents are instructed to follow the policy outlined in the attachments with respect to seagoing personnel on vessels owned by or bareboat chartered to the War Shipping Administration and assigned to General Agents under General Agency Agreements.

(Sgd.) M. L. Wilcox, Director of Operations.

[fol. 237] (Masters, Mates & Pilots of America, Marine Engineers' Beneficial Assn., May 4, 1942)

Statement of Policy

I. Existing Collective Bargaining Agreements to Stand.

Article 3 (d) of the Service Agreement signed between Agents and the War Shipping Administration under which Agents handle vessels owned by or bareboat chartered to the War Shipping Administration shall remain in force and effect. This article reads as follows:

“(d) The General Agent shall procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the orders of

direct or fully guaranteed obligations of the United States of America of the face value of the penalty of the bond under an agreement satisfactory in form to the United States;

(d) Without the consent of the United States, not sell, assign or transfer, either directly or indirectly or through any reorganization, merger or consolidation, this Agreement or any interest therein, nor make any agreement or arrangement whereby the service to be performed hereunder is to be performed by any other person, whether an agent or otherwise, except as provided in Article 6 hereof.

Article 4. (a) To the extent required by the United States, the Berth Sub-Agent and every related or affiliated company or holding company of the Berth Sub-Agent, authorized as provided in Article 13 hereof, to render any service or to furnish any stores, supplies, equipment, provisions, materials, or facilities which are for the account of the United States, the Agent or the General Agent under the terms of this Agreement, shall (1) keep its books, records and accounts relating to the management, operation, conduct of the business of and maintenance of the vessels covered by this Agreement in such form and under such regulations as may be prescribed by the United States; and (2) file, upon notice from the United States, balance sheets, profit and loss statements, and such other statements of operation, special reports, memoranda of any facts and transactions, which, in the opinion of the United States, affect the results in, the performance of, or transactions or operations under this Agreement.

(b) The United States is hereby authorized to examine and audit the books, records and accounts of all persons referred to above in this Article whenever it may deem it necessary or desirable.

(c) Upon the willful failure or willful refusal of any person described in this Article to comply with the provisions of this Article, the United States may rescind this Agreement.

Article 5. At least once a month the Agent or General Agent shall pay to the Berth Sub-Agent as full compensation for the Berth Sub-Agent's services hereunder, such

the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder."

The intention of this clause is that in order to make available the full supply of officers and men and to avoid favoritism as to conditions between one agent and another, with respect to preference of employment or use of union hiring halls, all agents will be required to procure officers and men in accordance with such conditions.

II. *Wages and Working Conditions.*

It is hereby agreed that the provisions of existing collective bargaining agreements be continued and observed unless changed by mutual agreement between the War Shipping Administration and the unions, or in case of a [fol: 238] deadlock by decision of the Maritime War Emergency Board.

III. *Discipline.*

The conditions aboard ship, including common hazard and peril, in war time require the highest standard of order and discipline. To accomplish this purpose, the unions agree to cooperate fully with the War Shipping Administration, as follows:

(1) Maintenance of the authority of the Master and of discipline, including strict and prompt enforcement of laws relating to conduct aboard ship.

(2) Elimination of crews' mass meetings, crews' committees and other similar meetings or groups aboard ship. However, one man in each department will be recognized as the spokesman for that department, but all disputes shall be settled only upon termination of the voyage in a continental port of the United States pursuant to procedures laid down in the collective bargaining agreements.

(3) Without waiving the right to strike, the unions hereby give firm assurance and guarantee that the exercises of this right will be absolutely withheld for the duration of the war.

fair and reasonable amount as the Administrator, War Shipping Administration, shall from time to time determine. Such compensation shall be deemed to cover, but without limitation, the Berth Sub-Agent's administrative and general expense (as presently itemized in General Order No. 22 of the United States Maritime Commission), advertising expense, taxes (other than taxes for which the Agent is reimbursed under Article 7 hereof), and any other expenses which are not directly and exclusively applicable to the operation of the vessels hereunder.

[fol. 275] Article 6. The Berth Sub-Agent shall exercise due diligence in the selection of agents. Such agents shall be subject to disapproval by the United States and any agency agreements shall be terminated by the Berth Sub-Agent whenever the United States shall so direct. Any compensation payable by the Berth Sub-Agent to its agents for services rendered in connection with the vessels assigned hereunder shall be subject to approval by the United States. Agency fees or equivalent allowances for branch offices in accordance with schedules approved by the United States will be reimbursable under Article 7 hereof.

Article 7. The Agent or General Agent shall reimburse the Berth Sub-Agent at stated intervals determined by the United States for all expenditures of every kind made by it in performing, procuring or supplying the services, facilities, stores, supplies or equipment as required hereunder, *excepting* general and administrative expense (as presently itemized in General Order No. 22 of the United States Maritime Commission), advertising expense, taxes (other than sales and similar taxes or foreign taxes of any kind to the extent determined by the United States to be classifiable as voyage expenses for the account of the United States) and any other expenses which are not directly and exclusively applicable to the maintenance, management, operation or the conduct of the business of the vessels hereunder. The Berth Sub-Agent shall be reimbursed for sales and similar taxes or foreign taxes of any kind to the extent determined by the United States to be classifiable as voyage expenses for the account of the United States to the extent that the Berth Sub-Agent shall have used due diligence to secure immunity from such taxation. The United States, the Agent or the General Agent may disallow, in whole or in part, as it may deem appropriate, and deny reimbursement for, expenses

131

IV. Duration.

The above provisions shall apply on all vessels of the United States Merchant Marine, owned by or bareboat chartered to The War Shipping Administration as long as the War Shipping Administration has jurisdiction of vessels of the American Merchant Marine.

On behalf of the National Organization of Masters, Mates and Pilots of America, (Sgd.) James J. Delaney. On behalf of the National Marine Engineers' Beneficial Association, (Sgd.) S. J. Hogan, E. S. Land; Edward Macauley, for the War Shipping Administration; William Radner.

Dated May 4, 1942, Washington, D. C.

[fol. 239] (Pacific Coast Seamen, Firemen, and Cooks and Stewards—May 4, 1942.)

Statement of Policy

I. Existing Collective Bargaining Agreements to Stand.

Article 3(d) of the Service Agreement signed between Agents and the War Shipping Administration under which Agents handle vessels owned by or bareboat chartered to the War Shipping Administration shall remain in force and effect. This article reads as follows:

"(d) The General Agent shall procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the

which are found to have been made in willful contravention of any outstanding instructions or which were clearly improvident or excessive.

Any moneys advanced to bonded persons by the Berth Sub-Agent for ship disbursements which are lost by reason of a casualty to the Vessel on which the money so advanced is carried shall in the event of such loss be considered an expense of the Berth Sub-Agent, subject to reimbursement as is in this Article 7 provided.

The United States, the Agent, or the General Agent may advance moneys to the Berth Sub-Agent to provide for disbursements hereunder in accordance with such regulations or conditions as the United States, the Agent or the General Agent may from time to time prescribe.

Article 8. The United States shall without cost or expense to the Berth Sub-Agent procure or provide insurance against, or shall assume, all insurable risks of whatsoever nature or kind relating to the vessels assigned hereunder including, but without limitation, marine, war and P. & I. risks, and all other risks or liabilities for breach of statute and for damage caused to other vessels, persons or property, and shall defend, indemnify and save harmless the Berth Sub-Agent against and from any and all loss, liability, damage and expense (including costs of court and reasonable attorneys' fees) on account of such risks and liabilities, to the extent not covered or not fully covered by insurance. The Berth Sub-Agent shall furnish reports and information and comply fully with all instructions that may be issued by the United States with regard to all salvage claims, damages, losses or other claims. Neither the United States nor the insurance underwriters shall have any right of subrogation against the Berth Sub-Agent with respect to such risks.

Article 9. In the event of general average involving vessels assigned to the Berth Sub-Agent under this Agreement, the Berth Sub-Agent shall comply fully with all instructions issued by the United States, the Agent or the General Agent in that connection including instructions [fol. 276] as to the appointment of adjuster, obtaining general average security and asserting liens for that purpose unless otherwise instructed, and supplying the adjuster with all disbursements accounts, documents and data required in the adjustment, statement and settlement of the

orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder."

The intention of this clause is that the General Agent will procure and make available to the Master for engagement by the Master, officers and men through the channels which the Agent has heretofore used for his own merchant ships. If the General Agent has contracts with unions and those contracts require for example preference of employment or use of union hiring halls, the Agent would be required to procure men in accordance with contracts.

II. *Wages and Working Conditions.*

Inasmuch as base wages, emergency wages, overtime rates, bonuses, war risk compensation, repatriation and allotment conditions have been generally equalized in East Coast, West Coast and Gulf Collective Bargaining Agreements [fol. 240], which agreements have established equitable practices and standards in manning the American Merchant Marine now necessary to furtherance of the war efforts, it is therefore agreed that the existing collective Bargaining Agreements be frozen for the duration of the war.

III. *Discipline.*

The conditions aboard ship, including common hazard and peril, in wartime require the highest standard of order and discipline. To accomplish this purpose, the unions agree to cooperate fully with the War Shipping Administration, as follows:

(1) Maintenance of the authority of the Master and of discipline including strict and prompt enforcement of laws relating to conduct aboard ship.

(2) Elimination of crews' mass meetings, crews' committees and other similar meetings or groups aboard ship. However, one man in each department will be recognized as the spokesman for that department, but all disputes shall be settled only upon termination of the voyage in port where shipping articles are closed.

(3) It is understood that all disputes will be settled through the regular machinery now in existence under

the collective bargaining agreements between the unions and the steamship operators.

(4) Without waiving the right to strike, the unions hereby give firm assurance and guarantee that the exercise of this right will be absolutely withheld for the duration of the war.

IV. Duration.

This Statement of Policy will remain in effect as long as the War Shipping Administration has jurisdiction of vessels of the American Merchant Marine.

(Sgd.) E. S. Land; Edward Macauley, for the War Shipping Administration; Harry Lundeberg, Secretary-Treasury, S. U. P. President, S. I. U.; John Hawk, Secretary-Treasurer, Atlantic & Gulf District, Seafarer's International Union; V. J. Malone, Secretary, Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Assn.; James W. Burke, Secretary, Marine Cooks & Stewards Assn.

Dated May 4, 1942, Washington, D. C.

[fol. 241]

May 8, 1942.

Mr. Joseph Curran, President, National Maritime Union of America, 346 West 17th Street, New York, New York.

DEAR MR. CURRAN:

I have your letter of May 7, 1942, asking for clarification of the Statement of Policy on certain points. You know the controversy which has been going on about the Navy taking over the Merchant Marine and about adoption of uniform Rules and Regulations to supplant the existing collective bargaining agreements. It is against this background that the Statement of Policy has been put forth. I want to emphasize that it is a statement of policy and not a set of rules. There are therefore many details which will have to be worked out in the light of the Statement of Policy as we go along. This I am sure we shall be able to do effectively and in a cooperative spirit.

Question No. 1: What guarantee is there in those proposals that the open shop is not frozen and that our right

to organize in unorganized steamship companies will not be impaired?

Answer: The subject is not covered by the Statement of Policy: whatever your rights may be in this respect, those rights remain unaffected by the Statement of Policy.

Question No. 2: Does this Statement of Policy propose that the union shall not be able to seek collective bargaining agreements with unorganized steamship companies after they have been organized?

Answer: No.

Question No. 3: In section 3, under Discipline, paragraph 2, does the elimination of crews' mass meetings, crews' committees, and other similar meetings for groups aboard ship, comprehend that there shall be no meetings permitted aboard ship. For example, we have now and are promoting safety meetings aboard ship, and meetings having as their basis the teaching of newly trained seamen in the art of seamanship between their watches.

Answer: As paragraph (1) in Section 3 under the heading "Discipline" indicates, it is considered sound policy under war conditions that the authority of the Master be strictly maintained. Paragraph 3 contemplates that no meetings be permitted aboard ship "where they tend in any way to interfere with the ship's operation"; and of this the [fol. 242] Master must be the judge. If there may be some Masters who will abuse their discretion in this regard, it is thought better in view of war conditions to remedy abuses ashore rather than to have arguments and disputes aboard ship whether a given meeting "interferes with the ship's operation." Should any such abuses develop, the War Shipping Administration will remedy them.

Question No. 4: In the same paragraph, will we be able to have meetings for the purpose of electing the spokesmen? Under our constitution, spokesmen for departments on ships must be elected at ships' meetings.

Answer: Since the Statement of Policy contemplates recognition of a spokesman for each department, ships' meetings may be held for the purpose of electing spokesmen as long as they don't interfere with the ships' operation.

Question No. 5: We are concerned with the fact that there is rumor that such spokesmen are to take the place of union officers. In other words, when the vessel arrives in United

general average. Reasonable compensation for and general average allowances to the Berth Sub-Agent in such cases shall be in accordance with directions, orders or regulations of the United States. This Article shall not apply to services required of the Owner under Time Charter.

Article 10. The negotiation and settlement of all salvage claims for services rendered by vessels shall be controlled by the Owner and the United States in accordance with the provisions of the applicable Time Charter. The Berth Sub-Agent shall furnish the United States, the Agent or the General Agent with full reports and information on all salvage services rendered.

Article 11. (a) The United States shall have the right to terminate this Agreement at any time as to any and all vessels assigned to the Berth Sub-Agent and to assume control forthwith of the business of said vessels upon fifteen (15) days' written or telegraphic notice.

(b) Upon giving to the United States thirty (30) days' written or telegraphic notice, the Berth Sub-Agent shall have the right to terminate this Agreement, but termination by the Berth Sub-Agent shall not become effective as to any vessel until her arrival and discharge at a continental United States port.

(c) This Agreement may be terminated, modified, or amended at any time by mutual consent.

Article 12. In case of termination of this Agreement, whether upon expiration of the stated period hereof or otherwise, all property of whatsoever kind then in the custody of the Berth Sub-Agent pursuant to this Agreement, shall be immediately turned over to the United States, the Agent or the General Agent at times and places to be fixed by the United States, and the United States, the Agent or General Agent may collect directly, or by such agent or agents as it may appoint, all freight moneys or other debts remaining unpaid: Provided, That the Berth Sub-Agent shall, if required by the United States, adjust, settle and liquidate the current business of the vessels. Notwithstanding the foregoing provisions, when the United States shall so direct, the Berth Sub-Agent shall complete the business of voyages commenced prior to the date as of which the Agreement shall be terminated, and, if directed by the United States and subject to any instructions issued by the

States ports, will the practice that is contained in our contracts for union officials to board the vessel to meet with the crew for the purpose of taking up any problems they may have continue, or does this Statement of Policy comprehend the elimination of that policy?

Answer: Section 2 of the Statement of Policy explicitly provides that the provisions of existing collective bargaining agreements be continued and observed. Whatever your contractual rights may be in respect of your officials boarding vessels, those rights remain unaffected.

Question No. 6: It is the feeling of our officers that there is lack of clarity on one or more important question. If the agents that the union now has contracts with were eliminated and new agents established who did not have previous relationship with the union, would that eliminate our contracts or would the War Shipping Administration, through Section 2, continue our collective bargaining contracts in that event?

Answer: There is no intention and the War Shipping Administration is committed not to "eliminate" the agents who now have contracts with the union. On the other hand, the War Shipping Administration must have full freedom to reallocate vessels from one service to another as the needs of the war effort may require and change agents accordingly; it being the settled policy of the War Shipping Administration to assign vessels in a particular service [fol. 243] to agents who have been operating in that service. The War Shipping Administration will under no circumstances use this freedom of action for the purpose of favoring agents who do not have relationships with the unions, against those who have.

To the extent that this question touches the matter of pools about which you have given me your views in your letter of May 1, 1942, the answer must be subject to whatever comprehensive plan may be formulated in that regard. Such a plan will make provision for the continuation of the unions as a source of supply of officers and men.

Very truly yours, (Sgd.) Edward Macauley; Assistant to the Administrator, War Shipping Administration.

United States with respect thereto, the Berth Sub-Agent shall continue to book cargo for the vessels for the next voyages after the termination of this Agreement. No such termination of this Agreement shall relieve either party of liability to the other in respect of matters arising prior to the date of such termination or of any obligation hereunder to indemnify the other party in respect of any claim or demand thereafter asserted, arising out of any matter done or omitted prior to the date of such termination.

Article 13. Agreements or arrangements with any interested or related company to render any service or to furnish any stores, supplies, equipment, materials, or facilities shall be submitted to the United States for approval as to employment. Unless and until such agreements or arrangements have been approved by the United States, compensation paid to any interested or related company shall be subject to review and readjustment by the United States. In connection with such review and readjustment, the United States may deny reimbursement hereunder of any portion of such compensation which it deems to be in excess of fair and reasonable compensation. The United States may also deny reimbursement, in whole or in part, of compensation under any arrangement or agreement with an interested or related company which it deems to be exorbitant, extortionate or fraudulent. The term "interested company" shall mean any person, firm, or corporation in which the Berth [fol. 277] Sub-Agent, or any related company of the Berth Sub-Agent, or any officer or director of the Berth Sub-Agent, or any employee of the Berth Sub-Agent who is charged with executive or supervisory duties, or any member of the immediate family of any such officer, director or employee, or any officer or director of any related company of the Berth Sub-Agent, or any member of the immediate family of an officer or director of any related company of the Berth Sub-Agent, owns any substantial pecuniary interest directly or indirectly. The term "related company", used to indicate a relationship with the Berth Sub-Agent for the purposes of this Article only, shall include any person or concern that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Berth Sub-Agent. The term "control" (including the terms "controlled by" and "under common control with") as used herein means the possession, directly or indirectly, of the power to direct or

Statement of Policy

I. Existing Collective Bargaining Agreements to Stand.

Article 3 (d) of the Service Agreement signed between Agents and the War Shipping Administration under which Agents handle vessels owned by or bareboat chartered to the War Shipping Administration shall remain in force and effect. This article reads as follows:

"(d) The General Agent shall procure the Master of the vessels operated hereunder subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be [fol. 244] paid in the customary manner with funds provided by the United States hereunder."

The intention of this clause is that in order to make available the full supply of officers and men and to avoid favoritism as to conditions between one agent and another, with respect to preference of employment or use of union hiring halls, all agents will be required to procure officers and men in accordance with such conditions.

II. Wages and Working Conditions.

It is hereby agreed that the provisions of existing collective bargaining agreements be continued and observed for the duration of the war unless changed by mutual agreement between the War Shipping Administration and the unions, or in case of a deadlock by decision of the Maritime War Emergency Board.

cause the direction of the management and policies of the Berth Sub-Agent (or related company), whether through ownership of voting securities, by contract, or otherwise.

Article 14. This Agreement, unless sooner terminated, shall extend until six months after the cessation of hostilities.

Article 15. The United States shall, when it may legally do so, have the advantage of any existing, or future, contracts of the Agent for the purchase or rental of materials, fuel, supplies, facilities, services, or equipment, if this may be done without unreasonably interfering with the requirements of other vessels owned or operated by the Berth Sub-Agent.

Article 16. (a) The United States shall indemnify, and hold harmless and defend the Berth Sub-Agent against any and all claims and demands (including costs and reasonable attorneys' fees in defending such claim or demand, whether or not the claim or demand be found to be valid) of whatsoever kind or nature and by whomsoever asserted for injury to persons or property arising out of or in any way connected with the operation or use of said vessels or the performance by the Berth Sub-Agent of any of its obligations hereunder, including but not limited to any and all claims and demands by passengers, troops, gun crews, crew members, shippers, third persons, or other vessels, and including but not limited to claims for damages for injury to or loss of property, cargo or personal effects, and claims for damages for personal injury or loss of life.

(b) The Berth Sub-Agent shall be under no responsibility or liability to the United States, the Agent or the General Agent for loss or damage to the vessels arising out of any error of judgment or any negligence on the part of any of the Berth Sub-Agent's officers, agents, employees, or otherwise. However, the Berth Sub-Agent may be held liable for loss or damage not covered by insurance or assumed by the United States as required under Article 8 of this Agreement, if such loss or damage is directly and primarily caused by wilful misconduct of principal supervisory shore-side personnel or by gross negligence of the Berth Sub-Agent in the selection of such principal supervisory personnel.

III. Discipline.

The conditions aboard ship, including common hazard and peril, in war time require the highest standard of order and discipline. To accomplish this purpose, the unions agree to cooperate fully with the War Shipping Administration, as follows:

- (1) Maintenance of the authority of the Master and of discipline including strict and prompt enforcement of laws relating to conduct aboard ship.
- (2) Elimination of crews' mass meetings, crews' committees and other similar meetings or groups aboard ship where they tend in any way to interfere with the ship's operation. However, one man in each department will be recognized as the spokesman for that department, but all disputes shall be settled only upon termination of the voyage in a continental port of the United States pursuant to procedures laid down in the collective bargaining agreements.
- (3) Without waiving the right to strike, the unions hereby give firm assurance and guarantee that the exercise of this right will be absolutely withheld for the duration of the war.

[fols. 245-246] IV. Duration.

The above provisions shall apply on all vessels of the United States Merchant Marine, owned by or bareboat chartered to the War Shipping Administration as long as the War Shipping Administration has jurisdiction of vessels of the American Merchant Marine.

On behalf of the National Maritime Union of America, (Sgd.) Joseph Curran, President; E. S. Land, Edward Macauley, for the War Shipping Administration. William Radner.

Dated May 12, 1942, Washington, D. C.

(c) In the event that the Berth Sub-Agent shall perform any stevedoring, terminal, or similar service for the vessels hereunder at commercial rates, the Berth Sub-Agent shall have all the obligations and responsibilities of the person performing such service under the standard or other approved form of contract with the United States or, in the absence of such standard or approved form, under usual commercial practice.

(d) The Berth Sub-Agent shall be under no liability to the United States, the Agent or the General Agent of any kind or nature whatsoever in the event that the Berth Sub-Agent should fail to perform any service hereunder by reason of any labor shortage, dispute or difficulty, or any [fol. 278] strike or lockout or any shortage of material or any act of God or peril of the sea or any other cause beyond the control of the Berth Sub-Agent whether or not of the same or similar nature; or shall do or fail to do any act in reliance upon instructions of military or naval authorities.

(e) The Agent or General Agent shall not be held responsible for acts of a Berth Sub-Agent expressly appointed by or at the direction of the United States.

Article 17. Wherever and whenever herein any right, power, or authority is granted or given to the United States, such right, power, or authority may be exercised in all cases by the War Shipping Administration or such agent or agents as it may appoint or by its nominee, and the act or acts of such agent or agents or nominee, when taken, shall constitute the act of the United States hereunder. In performing its services hereunder, the Berth Sub-Agent may rely upon the instructions and directions of the Administrator, the Agent or the General Agent, his officers and responsible employees, or upon the instructions and directions of any person or agency authorized by the Administrator. Wherever practicable, the Berth Sub-Agent shall request written confirmation of any oral instructions or directions so given.

Article 18. (a) The Berth Sub-Agent warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul this Agreement or in its discretion to deduct from any amount payable here-

[fols. 247-270] DEFENDANT'S EXHIBIT "D"

Title 46—Shipping

Chapter IV—War Shipping Administration

Part 306—General Agents and Agents

General Order No. 21

Whereas, by Executive Order No. 9954, dated February 7, 1942, the President established the War Shipping Administration to assure the most effective utilization of the shipping of the United States for the successful prosecution of the war; and

Whereas, the United States of America, acting by and through the Administrator, War Shipping Administration, has appointed certain Agents and General Agents, and will from time to time appoint additional ones, to conduct the business of vessels assigned to such agents under forms of Service Agreements (TCA-4/4/42 and GAA-4/4/42), approved by the Administrator on April 8, 1942, and

Whereas, it is desirable for Agents and General Agents to appoint Berth Sub-Agents to perform the functions of the Agent or General Agent under certain circumstances; and

Whereas, the Administrator deems it appropriate to issue the following Order concerning the handling of vessels assigned to Agents and General Agents under Service Agreements, and the appointment of Berth Sub-Agents by Agents and General Agents;

Now, therefore, it is hereby ordered that:

306.43 *Definitions*—The Terms "Agent" (Sec. 306.4), "General Agent" (Sec. 306.3), "Berth Sub-Agent" (Sec. 306.5 (a)), and "Sub-Agent" (Sec. 306.5(b)) as defined in General Order No. 12, as amended, shall have the same meaning in this Order.

306.44 *Service Agreements*—(GAA-4/4/42)—Service Agreements entered into between the United States of America, acting by and through the Administrator, War Shipping Administration, with shipping companies appointing them as General Agents to manage and conduct the business of vessels (excluding tankers, small craft, salvage and rescue vessels, tugs and barges, and other vessels from time to time excluded with the approval of the Administra-

tor) of which the War Shipping Administration is Owner or Owner Pro Hac Vice, and assigned to the General Agents by the United States from time to time, shall be as follows:

[fol. 271] 306.46 *Berth Sub-Agent Service Agreement* (BSA-9-22-42)—Unless otherwise determined by the Administrator, when vessels assigned to an Agent or General Agent are required for operation on voyages in services in which an operator of United States Flag vessels is recognized by War Shipping Administration as a regular berth operator, such operator will be designated by the War Shipping Administration as the Berth Sub-Agent of the Agent or General Agent.

The provisions of this section 306.46 are hereby made retroactive so as to become effective as to vessels time chartered by the Administration from the date of delivery of the vessels to the Administration and as to vessels owned or bareboat chartered by the Administration from the date of delivery of the vessels to the General Agent.

Service Agreements entered into between the United States of America, acting by and through the Administrator, War Shipping Administration, with berth operators approved by the Administration, appointing such berth operators as Berth Sub-Agents to conduct the business of vessels assigned to them from time to time by the United States, an Agent or General Agent, shall be as follows:

[fol. 272] BSA (Approved 9-22-42) Contract WSA

Agreement Between the War Shipping Administration and Berth Sub-Agents of Agents or General Agents

Whereas, the United States of America (herein called the "United States") acting by and through the Administrator, War Shipping Administration, has entered into service agreements (GAA and TCA) with certain companies designating such companies as Agent or General Agent to conduct the business of vessels assigned to such agents by the United States from time to time, and

Whereas, when vessels assigned to an Agent or General Agent are required for operation on voyages in services in which an operator of United States flag vessels is recognized by War Shipping Administration as a regular berth operator, such operator will be designated by War Shipping Administration as the Berth Sub-Agent of the Agent or General Agent; and

Whereas, the United States has designated _____, a _____ corporation, having its principal place of business at _____, (herein called the "Berth Sub-Agent") as eligible for appointment by Agents and General Agents as a Berth Sub-Agent.

Now, therefore, the United States and the Berth Sub-Agent, in consideration of the reciprocal undertakings and promises of the parties herein expressed, agree that the following provisions shall govern the rights and obligations of the United States and the Berth Sub-Agent, while the Berth Sub-Agent is performing services as Berth Sub-Agent at the request of the United States, an Agent or General Agent:

Article 1. The United States appoints the Berth Sub-Agent as its sub-agent and not as an independent contractor, to conduct the business of vessels assigned to it by the United States or by an Agent or General Agent, from time to time.

Article 2. The Berth Sub-Agent accepts the appointment and undertakes and promises so to conduct the business for the United States, in accordance with such directions, orders, or regulations as the United States has prescribed, or from time to time may prescribe, and upon the terms and conditions herein provided, of such vessels as have been or may be by the United States or by an Agent or General Agent assigned to the Berth Sub-Agent for that purpose.

Article 3A. Unless otherwise directed by the United States, the Berth Sub-Agent in all cases shall, to the best of its ability, for the account of the Agent or General Agent:

(a) Book the cargo and expedite its delivery alongside ship. Issue or cause to be issued to shippers customary freight contracts and bills of lading in the form prescribed by the United States, and prepare manifests and other cargo documents;

(b) Where appropriate, issue or cause to be issued to passengers customary passenger tickets. After a uniform passenger ticket shall have been adopted by the United States, such passenger ticket shall be used in all cases as soon as practicable after receipt thereof by the Berth Sub-Agent. Pending the issuance of such uniform passenger ticket, the Berth Sub-Agent may

continue to use the customary form of passenger ticket of the Agent or General Agent;

[fol. 273] (c) Collect all moneys due the United States and deposit, remit, or disburse the same in accordance with such regulations as the United States may prescribe from time to time, and account to the Agent or General Agent for all moneys collected or disbursed by it or its agents;

(d) Appoint sub-agents at foreign and intermediate ports of call for the receipt or delivery of cargo;

(e) Pay agency fees, port charges, and cargo expenses in foreign ports;

(f) Adjust cargo claims;

(g) Render accounts to and keep the Agent or General Agent fully informed as to the various activities being performed.

Article 3B. Where the Agent or General Agent does not provide his own facilities in the United States port of loading or discharge, and when not otherwise directed or approved by the United States, the Berth Sub-Agent shall, to the best of its ability for the account of the Agent or General Agent:

(a) Receive and deliver the cargo; provide and pay for stevedoring and other cargo handling expenses, port charges, wharfage and dockage, pilotage, commissions, and consular charges, except those pertaining to the master, officers and crew of time chartered vessels, and all other expenses in connection with the handling of the cargo.

Article 3C. Where the Agent or General Agent provides his own facilities in the United States port of loading or discharge, and when not otherwise directed or approved by the United States, the Agent or General Agent shall perform the duties provided in Article 3B, and the Berth Sub-Agent shall be relieved of those responsibilities, but the Berth Sub-Agent shall have the right to employ a Head Receiving or Delivery Clerk to supervise the operation of receiving and delivering cargo.

under the amount of such commission, percentage, brokerage or contingent fee.

(b) In any act performed under this Agreement, the Berth Sub-Agent and any subcontractor shall not discriminate against any citizen of the United States of America on the ground of race, creed, color or national origin.

Article 19. No person elected or appointed a member of or delegate to Congress or a Resident Commissioner, directly or indirectly, himself or by any other person in trust for him, or for his use or benefit, or on his account shall hold or enjoy this Agreement in whole or in part, except as provided in Section 206, Title 18, U. S. C. The Berth Sub-Agent shall not employ any member of Congress, either with or without compensation, as an attorney, agent, officer or director.

In Witness Whereof, the parties hereto have executed this Agreement in triplicate as of

United States of America, by E. S. Land, Administrator, War Shipping Administration, by _____, for the Administrator.

Attest: _____.

Approved as to form: _____, General Counsel, War Shipping Administration.

[fol 279] 306.47 *Appointment of Berth Sub-Agents*—An Agent or General Agent, after being so directed by War Shipping Administration, in appointing a Berth Sub-Agent shall do so by letter or telegram to the appointee, stating that the appointment is made pursuant to the provisions of this Order, and that the Berth Sub-Agent shall perform his duties on behalf of the Agent or General Agent in accordance with the provisions of the form of agreement set forth in section 306.46 of this Order which shall be incorporated in the notification of appointment by referring to this General Order, and the Berth Sub-Agent shall by letter or telegram accept the appointment. The effective date of the agreement between the parties shall be the date upon which the notification of acceptance of the appointment is dispatched by the Berth Sub-Agent, or as otherwise agreed by the parties with the approval of the Administrator.

(Sgd.) E. S. Land, Administrator, War Shipping Administration.

September 22, 1942.

PARTICULARS OF ENGAGEMENT

(212)

REFERENCE NO.	SIGNATURE OF SEAMAN	BIRTHPLACE (If foreign-born, but naturalized, insert NAT. in parenthesis after country of birth)	AGE	HEIGHT Ft. In.	DESCRIPTION Complexion	NUMBER OF CONTIN- UOUS DIS- CHARGE BOOK OR CERTIFI- CATE OF IDENTIFI- CATION	SERIAL NUMBER OF LICENSE OR CERTIFI- CATE	IN WHAT CAPACITY	WAGES ¹		PLACE AND DATE OF SIGNING THIS AGREEMENT			MONTHLY ALLOTMENTS		
									Per month	Rate per hour overtime	Place	Date	TIME AT WHICH TO BE ON BOARD	Amount	Payable to	
1	William S. Oakes	WILLIAM S. OAKES	340	5-14	7382											
2	William S. Oakes	LINTON A. NEVELL, JR.	54	5-6	Sp	Bl 3-316234	71598	Chief Mate	8250 00	50	VANCOUVER, WN	6-8-43	6-8-43			
3	Clinton C. Nevels Jr.	CLINTON C. NEVELL, JR.	35	5-10	Nh	Bl 3-319311	78255	2nd Mate	718 00				6-8-43	150	Mr. & Mrs. L. C. Nevels (Spouse)	
4	Clinton C. Nevels Jr.	CLINTON C. NEVELL, JR.	53	10-25	Sp											
5	Claude L. Taylor	CLAUDE L. TAYLOR	42	5-10 ^{1/2}	Sp	Bl 3-222143	78404	3rd Mate	192 75				6-8-43	175	Mr. & Mrs. Claude L. Taylor (Spouse)	
6	Alfred W. Walmsey	ALFRED W. WALMSEY	23	6-1	Sp	Bl 3-311438	E-372443	Radio Op.	172 50				6-8-43	50	Mr. & Mrs. Alfred W. Walmsey (Spouse)	
7	John D. Walmsley	GEORGE R. JOHNSON	41	5-5	Sp	Bl 3-254130	E-420901	Yeoman	137 50				6-8-43			
8	George R. Johnson	GEORGE R. JOHNSON	28	5-10	Sp	Bl 3-292133	E-326747	Tools	7 50				6-8-43			
9	George R. Johnson	GEORGE R. JOHNSON	55	12-5543				Carpenter	112 50							
10	Donald R. Johnson	FRED W. FINK	22	5-11	Sp	Bl 3-280135	E-113248	Boatswain	112 50				6-8-43	100	Mr. & Mrs. Donald R. Johnson (Spouse)	
11	Fred W. Fink	STEPHEN F. SULLIVAN	34	5-11	Sp	Bl 3-354140	0-912443	Able Seaman	100 00				6-8-43	50	Mr. & Mrs. Fred W. Fink (Spouse)	
12	Stephen F. Sullivan	JOHN C. HALL	19	5-10 ^{1/2}	Sp	Bl 3-194821	0-446448	Able Seaman	100 00				6-8-43	60	Mr. & Mrs. Stephen F. Sullivan (Spouse)	
13	John E. Hall	WALTER R. ANDERSON	19	5-11	Sp	Bl 3-293127	E-176624	Able Seaman	100 00				6-8-43	70	Mr. & Mrs. John E. Hall (Spouse)	
14	Malta L. Anderson	GLENN A. SHOOK	28	5-8	Sp	Bl 3-293134	B-91896	Able Seaman	100 00				6-8-43	100	Mr. & Mrs. Malta L. Anderson (Spouse)	
15	Malta L. Anderson	GLENN A. SHOOK	54	10-7798												
16	George D. Brumley, Jr.	GEORGE D. BRUMLEY, JR.	30	5-11 ^{1/2}	Sp	Bl 3-258119	E-320497	Able Seaman	100 00				6-8-43			
17	George D. Brumley, Jr.	MELVIN L. MOELLINGER	21	5-8 ³ /4	Sp	Bl 3-299652	0-131947	Able Seaman	100 00				PORTLAND, OR	6-8-43	6-8-43	
18	Melvin L. Moellinger	MELVIN L. MOELLINGER	25	5-7	Sp	Bl 3-192034	E-4337411	Ord. Seaman	82 50				VANCOUVER, WN	6-8-43	6-8-43	60
19	George D. Brumley, Jr.	MELVIN L. MOELLINGER	55	10-7252												
20	George D. Brumley, Jr.	MELVIN L. MOELLINGER	30	5-2	Sp	Bl 3-269217	E-402544	Ord. Seaman	82 50							
21	George D. Brumley, Jr.	MELVIN L. MOELLINGER	43	14-7451												
22	George D. Brumley, Jr.	MELVIN L. MOELLINGER	21	5-11	Sp	Bl 3-185715	E-402545	Ord. Seaman	82 50							
23	George D. Brumley, Jr.	MELVIN L. MOELLINGER														
24	George D. Brumley, Jr.	MELVIN L. MOELLINGER														
25	George D. Brumley, Jr.	MELVIN L. MOELLINGER														
26	George D. Brumley, Jr.	MELVIN L. MOELLINGER														
27	George D. Brumley, Jr.	MELVIN L. MOELLINGER														
28	George D. Brumley, Jr.	MELVIN L. MOELLINGER														
29	George D. Brumley, Jr.	MELVIN L. MOELLINGER														
30	George D. Brumley, Jr.	MELVIN L. MOELLINGER														
31	George D. Brumley, Jr.	MELVIN L. MOELLINGER														
32	George D. Brumley, Jr.	MELVIN L. MOELLINGER														
33	Thomas C. Price	THOMAS C. PRICE	42	6-4	Sp				229 14 9083							
									154059	MASTER						

Enter rate per month and rate per hour for overtime, as both items constitute wages.

100-1410

DEFENDANT'S EXHIBIT "F"

Form 705-A
(June 1928)

DEFENDANT'S EXHIBIT "F"

SHIPPING ARTICLES

(U. S. 4612, as amended—U. S. C., title 46, sec. 712)

DEPARTMENT OF COMMERCE
BUREAU OF MARINE INSPECTION
AND NAVIGATION
SHIPPING SERVICE

Notice is hereby given that section 4519 of the U. S. Revised Statutes (U. S. C., title 46, sec. 577) makes it obligatory on the part of the master of a merchant vessel of the United States, at the commencement of every voyage or engagement, to cause a legible copy of the agreement (forecastle card), omitting signatures, to be placed or posted up in such part of the vessel as to be accessible to the crew, under a penalty not exceeding ONE HUNDRED DOLLARS.

ARTICLES OF AGREEMENT BETWEEN MASTER AND SEAMEN IN THE MERCHANT SERVICE OF THE UNITED STATES

Required by Act of Congress, Title LIH, Revised Statutes of the United States (U. S. C., title 46, chap. 18)

NAME OF SHIP	OFFICIAL NO.	PORT OF REGISTRY	DATE OF REGISTER	REGISTERED TONNAGE		VOYAGE NO.
				GROSS	NET	
GEORGE DAVIDSON	243491	Portland, Oregon	6-8-43	7176	4380	61
REGISTERED MANAGING OWNER OR MANAGER						
Name	Address (State number of house, street and town)	NUMBER OF SEAMEN AND APPRENTICES FOR WHICH ACCOMMODATION IS CERTIFIED	CLASS OF SHIP			
Mar Shipping Administration (Owner)	Washington, D. C.	56	Steam-Freight			
Shepard Steamship Co. (Gen. Agents)	40 Central St., Boston, Mass.					

Office of the U. S. SHIPPING COMMISSIONER FOR THE PORT OF Portland, Oregon - June 8, 1943

IT IS AGREED between the Master and seamen, or mariners, of the

S. S. "GEORGE DAVIDSON"

of Portland, Oregon

of which

Thomas C. Price

is at present Master, or whoever shall go for Master, now bound from the Port of

Vancouver, Washington

a point in the Pacific Ocean to the westward of Vancouver, Washington, and thence to such ports and places in any part of the world as the Master may direct or as may be ordered or directed by the United States Government or any Department, Commission or Agency, thereof.

and back to a final port of discharge in the United States, for a term of time not exceeding NINE (9) calendar months.

GOING ON SHORE IN FOREIGN PORTS IS PROHIBITED EXCEPT BY PERMISSION OF THE MASTER

NO DANGEROUS WEAPONS OR GROG ALLOWED, AND NONE TO BE BROUGHT ON BOARD BY THE CREW

SCALE OF PROVISIONS to be allowed and served out to the Crew during the voyage in addition to the daily issue of time and lemon juice and sugar, or other antiscorbutics in any case required by law															
	Sun-day	Mon-day	Tue-sday	Wednes-day	Thurs-day	Fri-day	Satur-day		Sun-day	Mon-day	Tue-sday	Wednes-day	Thurs-day	Fri-day	Satur-day
Water	5	5	5	5	5	5	5	Coffee (green berry)	1	1	1	1	1	1	1
Biscuit	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Tea	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Pork, salt	1	1	1	1	1	1	1	Sugar	3	3	3	3	3	3	3
Pork, salt	1	1	1	1	1	1	1	Molasses	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Flour	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Dried fruit	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Canned meat	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Pickles	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Fresh meat	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Vinegar	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Fish, dry, preserved, or fresh	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Corn meal	4	4	4	4	4	4	4
Potatoes or yams	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Onions	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Canned tomatoes	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Lard	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Peas	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Butter	2	2	2	2	2	2	2
Beans	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Mustard, pepper, and salt sufficient for seasoning							
Rice	1/2	1/2	1/2	1/2	1/2	1/2	1/2								

SUBSTITUTES

One pound of flour daily may be substituted for the daily ration of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, or two ounces of tapioca, for six ounces of rice; six ounces of canned vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of tea for three-fourths of an ounce of coffee; three-fourths of an ounce of coffee for one-eighth of an ounce of tea; six ounces of canned fruit for three ounces of dried fruit; one-half ounce of lime juice for the daily ration of vinegar; four ounces of oatmeal or cracked wheat for one-half pint of corn meal; two ounces of pickled onions for four ounces of fresh onions.

When the vessel is in port and it is possible to obtain the same, one and one-half pounds of fresh meat shall be substituted for the daily rations of salt and canned meat; one-half pound of green cabbage for one ration of canned tomatoes; one-half pound of fresh fruit for one ration of dried fruit. Fresh fruit and vegetables shall be served while in port if obtainable. The seamen shall have the option of accepting the fare the Master may provide, but the right at any time to demand the foregoing scale of provisions.

The foregoing scale of provisions shall be inserted in every article of agreement, and shall not be reduced by any contract, except as above, and a copy of the same shall be posted in a conspicuous place in the galley and in the forecastle of each vessel.

And the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore; and in consideration of which service to be duly performed the said Master hereby agrees to pay to the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the foregoing scale. And it is hereby agreed, that any embezzlement or willful or negligent destruction of any part of the vessel's cargo or stores shall be made good to the owner out of the wages of the person guilty of the same. And if any person enters himself as qualified for a duty which he proves himself incompetent to perform, his wages shall be reduced in proportion to his incompetency. And it is also agreed that if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the Master or officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require.

exceeding NINE (9)

calendar months.

GOING ON SHORE IN FOREIGN PORTS IS PROHIBITED EXCEPT BY PERMISSION OF THE MASTER

NO DANGEROUS WEAPONS OR GROG ALLOWED, AND NONE TO BE BROUGHT ON BOARD BY THE CREW

SCALE OF PROVISIONS to be allowed and served out to the Crew during the voyage in addition to the daily issue of time and lemon juice and sugar, or other antiscorbutics in any case required by law															
	Sun-day	Mon-day	Tue-sday	Wednes-day	Thurs-day	Fri-day	Satur-day		Sun-day	Mon-day	Tue-sday	Wednes-day	Thurs-day	Fri-day	Satur-day
Water	5	5	5	5	5	5	5	Coffee (green berry)	1	1	1	1	1	1	1
Biscuit	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Tea	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Pork, salt	1	1	1	1	1	1	1	Sugar	3	3	3	3	3	3	3
Pork, salt	1	1	1	1	1	1	1	Molasses	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Flour	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Dried fruit	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Canned meat	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Pickles	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Fresh meat	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Vinegar	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Fish, dry, preserved, or fresh	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Corn meal	4	4	4	4	4	4	4
Potatoes or yams	1	1	1	1	1	1	1	Onions	1	1	1	1	1	1	1
Canned tomatoes	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Lard	1	1	1	1	1	1	1
Peas	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Butter	2	2	2	2	2	2	2
Beans	1/2	1/2	1/2	1/2	1/2	1/2	1/2	Mustard, pepper, and salt sufficient for seasoning							
Rice	1/2	1/2	1/2	1/2	1/2	1/2	1/2								

SUBSTITUTES

One pound of flour daily may be substituted for the daily ration of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, or two ounces of tapioca, for six ounces of rice; six ounces of canned vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of tea for three-fourths of an ounce of coffee; three-fourths of an ounce of coffee for one-eighth of an ounce of tea; six ounces of canned fruit for three ounces of dried fruit; one-half ounce of lime juice for the daily ration of vinegar; four ounces of oatmeal or cracked wheat for one-half pint of corn meal; two ounces of pickled onions for four ounces of fresh onions.

When the vessel is in port and it is possible to obtain the same, one and one-half pounds of fresh meat shall be substituted for the daily rations of salt and canned meat; one-half pound of green cabbage for one ration of canned tomatoes; one-half pound of fresh fruit for one ration of dried fruit. Fresh fruit and vegetables shall be served while in port if obtainable. The seamen shall have the option of accepting the fare the Master may provide, but the right at any time to demand the foregoing scale of provisions.

CERTIFICATES

Or Endorsements Made by Shipping Commissioners and Consuls

I HEREBY CERTIFY that the entries in the Discharge Books of seamen included in these articles agree with the applicable entries herein, or Certificates of Discharge have been issued in accordance therewith.

U. S. Shipping Commissioner.

CITIZENSHIP REQUIREMENTS (crew exclusive of licensed officers)

	SUBSIDIZED PASSENGER VESSELS	SUBSIDIZED CARGO VESSELS	NONSUBSIDIZED VESSELS
	90 percent shall be citizens of United States, either native-born or naturalized. Legally admitted aliens may comprise other 10 percent but may be employed in Steward's Department only.	On and after Sept. 27, 1920, 100 percent citizens of United States, either native-born or naturalized.	On and after Dec. 23, 1920, 75 percent citizens of United States, either native-born or naturalized.
Native-born citizens	Number	Number	Number
			28
Naturalized citizens			1
First papers U.S.A.			5
Admissible aliens			
Percentage (American citizens)	%	%	85 %

I HEREBY CERTIFY that the above statement as to the citizenship of the crew signed on these articles is true and correct.

Rudolph Grady
U. S. Shipping Commissioner.

ATTENTION OF MASTERS ESPECIALLY INVITED TO THE FOLLOWING REQUIREMENTS OF LAW

Agreement To Ship in Foreign Trade.

(R. S. 4511—46 U. S. C. 564) The master of every vessel bound from a port in the United States to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the Republic of Mexico, or of any vessel of the burden of seventy-five tons, or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before the commencement of the voyage, make an agreement, in writing, or in print, with every seaman whom he carries to sea as one of the crew, in the manner hereinafter mentioned:

(R. S. 4519—46 U. S. C. 570) The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, omitting signatures, to be placed or posted up in such part of the vessel as to be accessible to the crew, and on default shall be liable to a penalty of not more than \$100.

Penalty for Shipment Without Agreement.

(R. S. 4514—46 U. S. C. 567) If any person shall be carried to sea as one of the crew on board of any vessel making a voyage as hereinbefore specified (R. S. 4511) without entering into an agreement with the master of such vessel, in the form and manner, and at the place and times in such cases required, the vessel shall be held liable for each such offense to a penalty of not more than \$200. But the vessel shall not be held liable for any person carried to sea, who shall have secretly stowed away himself without the knowledge of the master, mate, or of any of the officers of the vessel, or who shall have falsely personated himself to the master, mate, or officers of the vessel, for the purpose of being carried to sea.

Shipment in Foreign Ports—Consular Control.

(R. S. 4617—46 U. S. C. 670) Every master of a merchant vessel who engages any seaman at a place out of the United States, in which there is a consular officer, shall, before carrying such seaman to sea, procure the sanction of such officer and shall engage seamen in his presence; and the rules governing the engagement of seamen before a shipping commissioner in the United States shall apply to such engagements made before a consular officer, and upon every such engagement the consular officer shall endorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence and otherwise duly made.

(R. S. 4518—46 U. S. C. 571) Every master who engages any seaman in any place in which there is a consular officer otherwise than as required by the preceding section shall incur a penalty of not more than \$100, for which penalty the vessel shall be held liable.

Shipment of Seamen in the Coasting or Nearby Foreign Trade.

(June 19, 1886—Sec. 2—46 U. S. C. 646) Shipping commissioners may ship and discharge crews for any vessel engaged in the coastwise trade, or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or the Republic of Mexico, at the request of the master or owner of such vessel.

Watches—Hours of Labor—Legal Holidays.

(R. S. 4551—Sec. 2—46 U. S. C. Supp. IV 673) In all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, lakes (other than Great Lakes), bays, sounds, bayous, and canals, exclusively, the licensed officers and sailors, coal passers, firemen, oilers, and water tenders shall, while at sea, be divided into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel. No licensed officer or seaman in the deck or engine department of any tug documented under the laws of the United States (except boats or vessels used exclusively for fishing purposes) navigating the Great Lakes, harbors of the Great Lakes, and connecting and tributary waters between Gary, Ind.; Duluth, Minn.; Niagara Falls, N. Y.; and Ogdensburg, N. Y., shall be required or permitted to work more than eight hours in one day except in case of extraordinary emergency affecting the safety of the vessel and/or life or property. The seamen shall not be shipped to work alternately in the fireroom and on deck, nor shall any licensed officer

FOREIGN	NEARBY	COASTWISE
41 0	Shipped. Reshipped. Total. Failed to join.	
41		
DECK	ENGINE	STEWARDS
Officers		
United States (native).....	3	4
United States (naturalized).....	—	—
Men		
United States (native).....	11	8
United States (naturalized).....	1	1
Austrian.....		
British.....		
Chinese.....		
Danish.....		
Dutch.....		
Filipino.....		
French.....		
German.....		
Italian.....		
Norwegian.....		
Portuguese.....		
Russian.....		
Spanish.....		
Swedish.....		
Central American.....		
South American.....		
Others U. S. A.		
TOTAL.....	16	14
	2	2
		5
		41

and each seaman, respectively, in the presence of the shipping commissioner, shall sign a mutual release of all claims for wages in respect of the past voyage or engagement, and the shipping commissioner shall also sign and attest it, and shall retain it in a book to be kept for that purpose, provided both the master and seaman assent to such settlement, or the settlement has been adjusted by the shipping commissioner.

(R. S. 4529—46 U. S. C. 597) A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

(R. S. 4530—46 U. S. C. 597) Every seaman on a vessel of the United States shall be entitled to receive on demand from the master or owner of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void. Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 4529 of the Revised Statutes: *Provided further*, That notwithstanding any release signed by any seaman under section 4552 of the Revised Statutes, any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require.

Discharge in Foreign Trade.

(R. S. 4549—46 U. S. C. 641) All seamen discharged in the United States from merchant vessels engaged in voyages from a port in the United States to any foreign port, or, being of the burden of seventy-five tons or upward, from a port on the Atlantic to a port on the Pacific, or vice versa, shall be discharged and receive their wages in the presence of a duly authorized shipping commissioner under this Title (R. S. 4501—4612), except in cases where some competent court otherwise directs; and any master or owner of any such vessel who discharges any such seaman belonging thereto, or pays his wages within the United States in any other manner, shall be liable to a penalty of not more than \$50.

(R. S. 4551—Subsec. (d)—46 U. S. C. Supp. IV 643 (d)) Upon the discharge of any seaman and the payment of his wages, the shipping commissioner shall enter in the continuous discharge book of such seaman, if the seaman carries such a book, the name and official number of the vessel, the nature of the voyage (foreign, intercoastal, or coastwise), the class to which the vessel belongs (steam, motor, sail, or barge), the date and place of the shipment and of the discharge of such seaman, the rating (capacity in which employed) then held by such seaman, and the signature of the person making such entries and nothing more.

(R. S. 4551—Subsec. (e)—46 U. S. C. Supp. IV 643 (e)) For the purpose of furnishing evidence of sea service in the case of seamen preferring the certificate of identification instead of the continuous discharge book, the Bureau of Marine Inspection and Navigation shall provide a certificate of discharge, printed on durable paper, in such form as to specify the name and citizenship of the seaman to whom it is issued, the serial number of his certificate of identification, the name and official number of the vessel, the nature of the voyage (foreign, intercoastal, or coastwise), the class to which the vessel belongs (steam, motor, sail, or barge), the date and place of the shipment and of the discharge of such seaman, and the rating (capacity in which employed) then held by such seaman. Records of service entered in either continuous discharge books or certificates of discharge shall contain no reference to the character or ability of the seaman. The shipping commissioner shall issue such certificate of discharge and make the proper entries therein, which certificate shall be signed by the seaman to whom it is issued and the master of the vessel and shall be witnessed by such shipping commissioner.

(R. S. 4551—Subsec. (k)—46 U. S. C. Supp. IV 643 (k)) Where vessels are required to sign on and discharge the crew before a shipping commissioner and no shipping commissioner is appointed or is available the functions and duties required by subsections (d) and (e) of this section to be performed by such shipping commissioner may be performed by a collector or deputy collector of customs; and where vessels are not required to sign on and discharge

I HEREBY CERTIFY that the above statement as to the citizenship of the crew, signed on these articles is true and correct.

Rudolph Brady
U. S. Shipping Commissioner.

Spanish						
Swedish						
Central American						
South American						
Others & S.A.	1	2	2	5		
TOTAL	16	14	11	41		

ATTENTION OF MASTERS ESPECIALLY INVITED TO THE FOLLOWING REQUIREMENTS OF LAW

Agreement To Ship in Foreign Trade.

(R. S. 4511—46 U. S. C. 564) The master of every vessel bound from a port in the United States to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the Republic of Mexico, or of any vessel of the burden of seventy-five tons, or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall before he presents any voyage, make an agreement, in writing, or in print, with every seaman whom he carries to sea as one of the crew, in the manner hereinafter mentioned:

(R. S. 4519—46 U. S. C. 567) The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, omitting signatures, to be placed or posted up in such part of the vessel as to be accessible to the crew, and on default shall be liable to a penalty of not more than \$100.

Penalty for Shipment Without Agreement.

(R. S. 4514—46 U. S. C. 567) If any person shall be carried to sea as one of the crew on board of any vessel making a voyage as hereinbefore specified (R. S. 4511) without entering into an agreement with the master of such vessel, in the form and manner, and at the place and times in such cases required, the vessel shall be held liable for each such offense to a penalty of not more than \$200. But the vessel shall not be held liable for any person carried to sea, who shall have secretly stowed away himself without the knowledge of the master, mate, or of any of the officers of the vessel, or who shall have falsely personated himself to the master, mate, or officers of the vessel, for the purpose of being carried to sea.

Shipment in Foreign Ports Before Consul.

(R. S. 4617—46 U. S. C. 570) Every master of a merchant vessel who engages any seaman at a place out of the United States, in which there is a consular officer, shall, before carrying such seaman to sea, procure the sanction of such officer and shall engage seamen in his presence; and the rules governing the engagement of seamen before a shipping commissioner in the United States shall apply to such engagements made before a consular officer, and upon every such engagement the consular officer shall endorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence and otherwise duly made.

(R. S. 4518—46 U. S. C. 571) Every master who engages any seaman in any place in which there is a consular officer otherwise than as required by the preceding section shall incur a penalty of not more than \$100, for which penalty the vessel shall be held liable.

Shipment of Seamen in the Coasting or Nearby Foreign Trade.

(June 19, 1886—Sec. 2—46 U. S. C. 646) Shipping commissioners may ship and discharge crews for any vessel engaged in the coastwise trade, or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or the Republic of Mexico, at the request of the master or owner of such vessel.

Watches—Hours of Labor—Legal Holidays.

(R. S. 4551—Sec. 2—46 U. S. C., Supp. IV 673) In all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, lakes (other than Great Lakes), bays, sounds, bayous, and canals, exclusively, the licensed officers and sailors, coal passers, firemen, oilers, and water tenders shall, while at sea, be divided into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel. No licensed officer or seaman in the deck or engine department of any tug documented under the laws of the United States (except boats or vessels used exclusively for fishing purposes) navigating the Great Lakes, harbors of the Great Lakes, and connecting and tributary waters between Gary, Ind.; Duluth, Minn.; Niagara Falls, N. Y.; and Ogdensburg, N. Y., shall be required or permitted to work more than eight hours in one day except in case of extraordinary emergency affecting the safety of the vessel and/or life or property. The seamen shall not be shipped to work alternately in the fireroom and on deck, nor shall those shipped for deck duty be required to work in the fireroom, or vice versa; nor shall any licensed officer or seaman in the deck or engine department be required to work more than eight hours in one day; but these provisions shall not limit either the authority of the master or other officer or the obedience of the seamen when in the judgment of the master or other officer the whole or any part of the crew are needed for maneuvering, shifting berth, mooring, or unmooring, the vessel or the performance of work necessary for the safety of the vessel, her passengers, crew, and cargo, or for the saving of life aboard other vessels in jeopardy, or when in port or at sea, from requiring the whole or any part of the crew to participate in the performance of fire, lifeboat, or other drills. While such vessel is in a safe harbor no seaman shall be required to do any unnecessary work on Sundays or the following-named days: New Year's Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, but this shall not prevent the dispatch of a vessel on regular schedule or when ready to proceed on her voyage. And at all times while such vessel is in a safe harbor, eight hours, inclusive of the anchor watch, shall constitute a day's work. Whenever the master of any vessel shall fail to comply with this section and the regulation issued thereunder, the owner shall be liable to a penalty not to exceed \$500, and the seamen shall be entitled to discharge from such vessel and to receive the wages earned. But this section shall not apply to vessels engaged in salvage operations: *Provided*, That in all tugs and barges subject to this section when engaged on a voyage of less than six hundred miles, the licensed officers and members of crews other than coal passers, firemen, oilers, and water tenders may, while at sea, be divided into not less than two watches, but nothing in this provision shall be construed as repealing any part of section 222 of this title. This section shall take effect six months after June 25, 1936. (As amended June 25, 1936, c. 818, 2, 49 Stat. 1933; June 23, 1938; c. 597, 52 Stat. 944.)

Wages.

(R. S. 4552—46 U. S. C. 644) The following rules shall be observed with respect to the settlement of wages: First. Upon the completion, before a shipping commissioner, of any discharge and settlement, the master or owner

and each seaman, respectively, in the presence of the shipping commissioner, shall sign a mutual release of all claims for wages in respect of the past voyage or engagement, and the shipping commissioner shall also sign and attest it, and shall retain it in a book to be kept for that purpose, provided both the master and seaman assent to such settlement; or the settlement has been adjusted by the shipping commissioner.

(R. S. 4524—46 U. S. C. 607) A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

(R. S. 4530—46 U. S. C. 597) Every seaman on a vessel of the United States shall be entitled to receive, on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 4529 of the Revised Statutes: *Provided further*, That notwithstanding any release signed by any seaman under section 4552 of the Revised Statutes, any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require.

Discharge in Foreign Trade.

(R. S. 4549—46 U. S. C. 641) All seamen discharged in the United States from merchant vessels engaged in voyages from a port in the United States to any foreign port, or, being of the burden of seventy-five tons or upward, from a port on the Atlantic to a port on the Pacific, or vice versa, shall be discharged and receive their wages in the presence of a duly authorized shipping commissioner under this Title (R. S. 4501—4612), except in cases where some competent court otherwise directs; and any master or owner of any such vessel who discharges any such seaman belonging thereto, or pays his wages within the United States in any other manner, shall be liable to a penalty of not more than \$50.

(R. S. 4551—Subsec. (d)—46 U. S. C., Supp. IV 643 (d)) Upon the discharge of any seaman and the payment of his wages, the shipping commissioner shall enter in the continuous discharge book of such seaman, if the seaman carries such a book, the name and official number of the vessel, the nature of the voyage (foreign, intercoastal, or coastwise), the class to which the vessel belongs (steam, motor, sail, or barge), the date and place of the shipment and of the discharge of such seaman, and the rating (capacity in which employed) then held by such seaman, and the signature of the person making such entries and nothing more.

(R. S. 4551—Subsec. (e)—46 U. S. C., Supp. IV 643 (e)) For the purpose of furnishing evidence of sea service in the case of seamen preferring the certificate of identification instead of the continuous discharge book, the Bureau of Marine Inspection and Navigation shall provide a certificate of discharge, printed on durable paper, in such form as to specify the name and citizenship of the seaman to whom it is issued, the serial number of his certificate of identification, the name and official number of the vessel, the nature of the voyage (foreign, intercoastal, or coastwise), the class to which the vessel belongs (steam, motor, sail, or barge), the date and place of the shipment and of the discharge of such seaman, and the rating (capacity in which employed) then held by such seaman. Records of service entered in either continuous discharge books or certificates of discharge shall contain no reference to the character or ability of the seaman. The shipping commissioner shall issue such certificate of discharge and make the proper entries therein, which certificate shall be signed by the seaman to whom it is issued and the master of the vessel and shall be witnessed by such shipping commissioner.

(R. S. 4551—Subsec. (k)—46 U. S. C., Supp. IV 643 (k)) Where vessels are required to sign on and discharge the crew before a shipping commissioner and no shipping commissioner is appointed or is available the functions and duties required by subsections (d) and (e) of this section to be performed by such shipping commissioner may be performed by a collector or deputy collector of customs; and where vessels are not required to sign on and discharge the crew before a shipping commissioner the duties and functions required by subsections (d) and (e) of this section to be performed by the shipping commissioner shall be performed by the master of such vessel. Any master who shall fail to perform such duties or functions shall be fined in the sum of \$50 for each offense.

Discharge in Foreign Ports.

(R. S. 4580—46 U. S. C. 682) Upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of any seaman for his own discharge, if it appears to such officer that said seaman has completed his shipping agreement or is entitled to his discharge under any act of Congress or according to the general principles or usages of maritime law as recognized in the United States, such officer shall discharge said seaman, and require from the master of said vessel, before such discharge shall be made, payment of the wages which may then be due said seaman; but no payment of extra wages shall be required by any consular officer upon such discharge of any seaman except as provided in this act.

Arbitration Before Shipping Commissioner.

(R. S. 4554—46 U. S. C. 651) Every shipping commissioner shall hear and decide any question whatsoever between a master, consignee, agent, or owner, and any of his crew, which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall, in any legal proceedings which may be taken in the matter, before any court of justice, be deemed to be conclusive as to the rights of the parties. And any document under the hand and official seal of a commissioner purporting to be such submission or award shall be prima facie evidence thereof.

226

FOR NEXT OF KIN	CONDUCT AND QUALIFI- CATIONS	SHIPPING COMMI- SSIONER'S SIGNA- TURE OR INITIALS	PLACE, DAY LEAVING BY Place
Lev (Geo)		R.G.	
Montana and Ore.		R.G.	
Ore and Miss.		R.G.	
Ore		R.G.	
co. Calif Omaha (Ia)		R.G.	
St.		R.G.	
Wash (St)		R.G.	
Ore		R.G.	
Wash		R.G.	
co. Calif Omaha (Ia)		R.G.	
Ore Michigan (Ia)		R.G.	
Ia.		R.G.	
Rock (Mo)		R.G.	
Rocky, Ore Supply (Mo)		R.G.	
Wash (Mo)		R.G.	
Ia.		R.G.	
co. Calif		R.G.	
Ia.		R.G.	
co. Calif		R.G.	

ADDRESS OF WIFE OR NEXT OF KIN	CONDUCT AND QUALIFI- CATIONS	SHIPPING COMMI- SSIONER'S SIGNA- TURE OR INITIALS	PLACE, DAY LEAVING ST
			Place
Walter B. Baker (Bro)		RG	
Atlanta, Georgia 2110 E. 32nd Ave.		RG	
Portland, Ore Mr. Bill J. (names) 1014 N. 11th Portland, Ore 311 Fulton St		RG	
San Francisco, Calif Stuart G. Holmeyer (Son) 1004 E. 65th St.		RG	
Chicago, Ill Mrs. H. Johnson (Fa) 1216 E. 21st St.		RG	
Milwaukee, Wis 4511 Iowa Ave		RG	
Fresno, Calif 6110 N. E. Hoyt St.		RG	
Portland, Ore 739-5th Ave		RG	
San Francisco, Calif 4700 S. E. Ogden St.		RG	
Portland, Ore 3417 N. Michigan Ave		RG	
Portland, Ore Ethel G. Shook (Mo) 5th St Second Floor, Ore		RG	
Mr. G. D. Brumley (Mo) 2257 Roosevelt Blvd. George, Ore Main St		RG	
754 Divisadero St.		RG	
San Francisco, Calif 954 Laguna Ave		RG	
Burlingame, Calif 550 Eddy St		RG	
San Francisco, Calif		RG	

W.R. SHIPPING ADMINISTRATION
99 JOHN STREET
NEW YORK 7, N. Y.
SEPTEMBER 10, 1943

U. S. COAST GUARD
SHIPPING COMMISSIONER
RECEIVED

SEP 15 1943
PORTLAND, OREGON

United States Coast Guard
925 Failing Building
Portland 4, Oregon

Attn: Harold C. Jones
U.S. Shipping Commissioner

Dear Sirs:

SS GEORGE DAVIDSON

undated

Receipt is acknowledged of your letter ~~index~~ enclosing Certificates of Beneficiaries with respect to the above named vessel.

Very truly yours

E. A. Bloomquist
Chief Adjuster
Division of Maritime Insurance

By:

F. A. Hubbard
(Miss) F. A. Hubbard

FAH/aw

W.R SHIPPING ADMINISTRATION
99 JOHN STREET
NEW YORK 7, N. Y.
SEPTEMBER 10, 1943

U. S. COAST GUARD
SHIPPING COMMISSIONER
RECEIVED.

SEP 15 1943

PORTLAND, OREGON

United States Coast Guard
925 Failing Building
Portland 4, Oregon

Attn: Harold C. Jones
U.S. Shipping Commissioner

Dear Sirs:

SS GEORGE DAVIDSON

undated

Receipt is acknowledged of your letter ~~REB~~ enclosing Certificates of Beneficiaries with respect to the above named vessel.

Very truly yours

E. A. Bloomquist
Chief Adjuster
Division of Wartime Insurance

By: F. A. Hubbard
(Miss) F. A. Hubbard

FAH/aw

ATTEN-
TATION
OF SHIP-
PING
COMMI-
SSIONER

Reference No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Vancouver, Washington
June 8, 1943

It is agreed that the Master, Officers and Members of the Crew shall be furnished the war risk insurance protection covering Loss of Life, Disability (including Dismemberment and Loss of Function), Detention (including Repatriation and similar cases), and Loss of or Damage to Personal Effects prescribed by the Decisions of the Maritime War Emergency Board, as amended or modified from time to time, and the marine risk insurance protection covering such items afforded by the Second Seamen's War Risk Policy, as amended. Such personnel shall also receive the war bonuses specified by the Decisions of the Maritime War Emergency Board, as amended or modified from time to time.

Attested

Kindolph Grady
Deputy U. S. Shipping Commissioner

Thomas O'Brien
Master

216

[fol. 286]

DEFENDANT'S EXHIBIT "L"

d. Wartimepandi Agreement of December 1, 1942 (Parts I and II and Addenda No. 1 and No. 2)¹

Wartimepandi Agreement

Part I

This agreement, consisting of Parts I and II, made as of the 1st day of December, 1942, by and between the United States of America, acting by and through the Administrator, War Shipping Administration, herein referred to as the "United States", and American Steamship Owners Mutual Protection and Indemnity Association, Inc., herein referred to as "American Association", Fireman's Fund Insurance Company, herein referred to as "Fireman's Fund", and The American Insurance Company, American Eagle Fire Insurance Company, The Continental Insur-

¹ The Wartimepandi Agreement December 1, 1942 as amended by Addendum No. 1 (see page 793) and Addendum No. 2 (see page 796) is an agreement between the Administrator WSA and commercial marine underwriters pursuant to which they provide marine protection and indemnity insurance on vessels owned by or bareboat chartered to the War Shipping Administration, subject to a limited profit arrangement. In addition to the insurance provided by the Agreement, the Administration has the benefit of underwriters' services in the settlement of claims against the Administration arising out of the operation of these vessels. Such services are in connection with seamen's claims for loss of life or personal injury, carrier's liability to cargo, damage to shore structures, and other liabilities insured under the policy. The services obtained from underwriters enables the WSA to avail itself of the underwriters' manpower, eliminates the duplication of such services by the Administration and preserves the American marine protection and indemnity insurance market and its related activities for the post-war period.

This Agreement was for the period December 1, 1942, to December 1, 1943. Certain of the provisions have been the subject of clarifying and modifying letters.

754 Digrado St.
San Francisco, Calif.
954 Laguna Ave.
Burlingame, Calif.
550 Eddy St.
San Francisco, Calif.

26
26
26

JESSIE M. PRICE (WIPES
345 FLORENCE ST.
MAMA RINECK, N.Y.

Mr. H.
cc, Calif.
Ave
W. Calif.
cc, Calif.



14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

cc
st.
N.Y.

(WIPER)

10-000

6. OVERTIME

Hours @ _____ per Hr. _____ Sec. Watches \$ _____

7. MEAL ALLOWANCE
ASHORE

days @ \$ _____ per day \$ _____

8. ROOM ALLOWANCE
ASHORE

days @ \$ _____ per day \$ _____

9. TOTAL EARNINGS (Lines 1 to 8)

DEDUCTIONS:

10. WITHHOLDING TAX (Item No. 9 less 7 and 8) \$ _____

Less Exemptions Days @ \$ _____ @ 20%

11. SOCIAL SEC. TAX (Items No. 9 less 7 and 8) \$ _____

Plus Board & Log Days @ \$ _____ @ %

12. ALLOTMENTS

13. ADVANCES

14. SLOPS

15. FINES

16.

17. TOTAL DEDUCTIONS

18. BALANCE DUE

I CERTIFY THAT THIS PAYROLL VOUCHER IS TRUE AND CORRECT; THAT THE PERSON NAMED HEREON WAS EMPLOYED AND HAS PERFORMED THE SERVICES FOR THE PERIOD AS STATED ABOVE; AND THAT THE PERSON WHOSE NAME APPEARS ON THIS PAYROLL VOUCHER IS ENTITLED TO THE AMOUNT OF PAY STATED ABOVE.

Received Payment in Full

(Master)

(Payee)

Paid in full before me in accordance with the above

Certified as Correct

U.S.S.C.

(Port Purser)

FORM 35 5M SETB-1-44

ance Company, Fidelity-Phenix Fire-Insurance Company of New York, Firemen's Insurance Company of Newark, New Jersey, Glens Falls Insurance Company, and The Hanover Fire Insurance Company, herein referred to as "Marine Office Group", and Agricultural Insurance Company, The Automobile Insurance Company of Hartford, Connecticut, The Home Insurance Company, New York, United States Fire Insurance Company, and Westchester Fire Insurance Company, herein referred to as "Fulton Group",

Witnesseth:

The parties hereto mutually agree as follows:

I

The American Association, Fireman's Fund, Marine Office Group, and Fulton Group are each herein referred to as "Underwriter", and are collectively referred to as "Underwriters".

II

The Underwriters agree to provide protection and indemnity insurance to the United States, its General Agents and Agents under Service Agreements, Berth Agents and Sub-Agents acting on their behalf and Owners, herein referred to collectively as the Assured, in respect of all iron and steel ocean-going vessels of more than 1000 gross registered tons, and any other vessels mutually agreed upon, owned by or bareboat chartered to the United States of America, acting by and through the Administrator, War Shipping Administration, hereinafter referred to as the "insured vessels", and the United States agrees to insure [fol. 287] all such vessels with the Underwriters, against the risks and on the terms and conditions set forth herein and in the policies of insurance to be issued, herein referred to as the "insured risks", which policies, modified to provide any rates, terms and conditions specially agreed upon, shall generally conform to the form of policy attached hereto, marked Part II.

III

The Underwriters shall each execute and deliver to the United States, a policy of insurance in compliance with the provisions of Article II hereof, and thereafter, upon application by the War Shipping Administration, or any Gen-

eral Agent thereof, the Underwriter to which such application is made shall issue in duplicate a certificate of insurance, generally in the form attached to the policy, by which the insurance provided by the policy, subject to the terms and conditions of this agreement, shall be extended to cover the Assured in respect of all vessels named in the application.

In the event that through error application for insurance pursuant hereto has not been made to any Underwriter, then all who would have been covered had such application been made shall be held covered by the Underwriter to which notice of the error is given, provided that application is made promptly after the omission is known to the War Shipping Administration.

Upon the transfer of an insured vessel to another General Agent, the certificate of insurance then outstanding shall be surrendered to the issuing Underwriter, and a new certificate shall be issued by the Underwriter to which a new application is made.

IV

The liability of an Underwriter in respect of any one accident or occurrence shall not, unless otherwise agreed, exceed an amount which shall be the equivalent of:

(a) \$175 per gross registered ton in respect of any dry cargo or tank vessel completed prior to January 1, 1938;

(b) \$250 per gross registered ton in respect of any other vessel including fully refrigerated vessels and seatrains;

Provided, however, That unless otherwise agreed, the liability of an Underwriter shall in no event exceed \$2,000,000 in respect of any one accident or occurrence in connection with any one vessel.

V

The insurance to be made pursuant hereto shall, unless otherwise agreed, attach at and from the 1st day of December, 1942, at 12.01 a. m. Eastern War Time, and shall terminate on the 1st day of December, 1943 at 12.01 a. m. Eastern War Time; provided, however, that, unless otherwise agreed, insurance shall not attach in respect of any vessel during any period she is chartered or sub-chartered

on a bareboat basis by the War Shipping Administration to the War Department, Navy Department, or other agency of the Government, or the Government of any Nation Signatory to the United Nations Pact, unless the vessel is manned by the War Shipping Administration.

[fol. 288]

VI

The United States shall pay, quarterly in advance to the Underwriter making insurance pursuant hereto, an initial annual premium at the rate of 75¢ per gross registered ton for each insured tank vessel, and \$1.50 per gross registered ton for each insured iron and steel ocean going vessel of more than 1000 gross registered tons, in respect of which certificates of insurance have been issued as provided in Article II hereof. The premium for any insurance attaching after December 1, 1942, shall be prorated from the date of attachment to December 1, 1943.

VII

Premiums paid by the United States in accordance with Article VI hereof shall be subject to readjustments as follows:

A. As soon as practicable after December 1, 1943, but in no event later than June 1, 1944, each Underwriter, with respect to all insurances pursuant hereto, shall make the following computations based on receipts and expenditures:

(a) The total receipts shall comprise the following items:

(i) All premiums paid by the United States, other than pursuant to the readjustment provided for in this article;

(ii) Any amounts refundable or recoverable under the terms of excess of loss reinsurance policies.

(b) The total expenditures shall comprise the following items:

(i) Losses and loss expenses paid in respect of insured risks;

(ii) Reserve for unpaid losses, unreported losses, possible liabilities on uncompleted voyages, and loss expenses. The War Shipping Administration shall have the privilege of reviewing such reserves;

(iii) Allowances for management, supervision and claims service in accordance with the provisions of Article VIII hereof;

(iv) Premiums for excess of loss reinsurance, in accordance with policies or pro-forma policies on terms agreed upon with the War Shipping Administration;

(v) State or municipal taxes, if any, or premiums or underwriting profits;

(vi) Any premiums refunded to the United States other than pursuant to the readjustment provided for in this Article.

B. If the totals for the Underwriters under A (a) above shall exceed the total of the items under A (b) above, 90% of the difference shall be established as a credit in favor of the United States on account of readjustment return premiums, 25% of such amount being debited to each of the Underwriters. If the total for the Underwriters under A (b) above shall exceed the total of the items under A (a) above, 90% of the difference shall be established as a debit against the United States on account of readjustment additional premiums, 25% of such amount being credited to each of the Underwriters.

C. A recomputation may be made by the Underwriters at any time, but not more than 120 days after the previous computation, and on the basis of such recomputation the debit or credit established as aforesaid shall be replaced by a new debit or credit similarly arrived at. In any such recomputation, the new debit or credit shall be reduced by [fol. 289] the amount of any payment of readjustment return premium or readjustment additional premium previously made pursuant to the provisions of Clause D below.

D. Until final liquidation, as hereinafter provided, no payment shall be made to the United States on account of any credit as aforesaid unless the amount of the same exceeds 100% of reserves for unpaid losses as per A (b) (ii) above, and the amount of any such payment shall only be for the excess of such 100%. No payment shall be made to the Underwriters on account of any debit as aforesaid unless the amount of same exceeds 50% of reserves for unpaid losses as per A (b) (ii) above, and the amount of any

such payment shall only be for the excess of such 50%. Payments as aforesaid shall be due and payable within thirty days after such computation.

E. Final accounting and settlement may be made at any time by mutual agreement, and shall, in any event, be made as soon as all known liabilities have been liquidated, at which time the full amount of any credits as aforesaid which has not yet been paid shall be paid to the United States and the full amount of any debit as aforesaid which has not been paid shall be paid to the Underwriters.

F. The War Shipping Administration reserves the right to audit any statement as above, and shall also have the privilege of reviewing the fees, costs, charges and expenses referred to in Paragraph C of Article VIII, but in such audit or review, no item of expense, claims expense, or claims settlement, shall be disallowed if made in accordance with Article X hereof or if made in good faith and pursuant to this agreement.

G. Premiums paid to an Underwriter on insurance written pursuant hereto and reinsurance premiums paid to an Underwriter by another Underwriter in connection with reinsurance between the Underwriters of business written pursuant hereto, shall not be or be regarded or treated as earned until (and then only to the extent that) such premiums or reinsurance premiums are used to pay the items listed in A (b) of this Article, or are finally taken over and appropriated by the Underwriter following a readjustment as provided for in paragraphs B and C of this Article.

VIII

(a) The Underwriters shall provide competent and adequate management, supervision and claims services;

(b) The allowance for management, supervision and claims service provided in Article VII A (b) (iii) hereof, shall be 11 $\frac{2}{3}$ per gross ton for each insured vessel, prorated in respect of any insurance attaching after December 1, 1942, from the date of attachment to December 1, 1943, and shall cover the following:

(i) Costs of said management, supervision and claims service, except as hereinafter set forth;

(ii) Brokerage at the rate of 2¢ per gross ton of the insured vessels, prorated in respect of any insurance

attaching after December 1, 1942, from the date of attachment to December 1, 1943:

(iii) Investigation and adjustment expenses incurred in the Ports of New York, New Orleans, Los Angeles, San Francisco, and Portland, Oregon, but excluding [fol. 290] expenses of investigation conducted by attorneys at law at said ports, if the claims develop into legal actions;

(c) Expenses not chargeable to the allowance for management, supervision and claims service, but to be included as expenses under Article VII (b) (i) hereof, shall be the following:

(i) Doctors, dentists, hospital, x-ray, laboratory charges, drugs, medicines, dressings, nurses, attendants, ambulances, physical therapy, artificial and other orthopedic appliances; also other costs and charges relating to the relief, cure or treatment of injuries and illnesses;

(ii) Attorneys' fees, costs and charges, including legal expenses and court costs incurred in the defense of litigation either pending or contemplated;

(iii) Charges and expenses of correspondents and investigation of claims other than at the ports of New York, New Orleans, Los Angeles, San Francisco and Portland, Oregon;

(iv) Fees and charges of experts, lay or professional, doctors, surveyors, engineers, scientists, chemists, photographers (still and motion picture), model makers, metallurgists, professors, together with costs, expenses and witness fees of lay and other witnesses, etc.;

(d) Any fee for legal services in excess of \$1500 shall be subject to the approval of the War Shipping Administration.

IX

(a) Any General Agent of the United States insured hereunder shall, unless otherwise agreed, be authorized to settle directly, or approve settlement of, cargo claims up to \$1000 in the aggregate, on any one voyage, and life, injury

or illness claims up to \$250 each, and all other claims up to \$100 each.

(b) An Assured, at any time, may ask for, and the Underwriter shall give advice and assistance in respect of any claim arising from an insured risk, regardless of the amount.

X

A Loss Committee shall be appointed, comprised of a representative of each Underwriter. A representative of the War Shipping Administration may attend the meetings of the Committee and it shall receive due notice of all such meetings. The Committee shall consider all claims made against the Assured involving amounts in excess of \$10,000, and any claims referred to the Committee by any of the Underwriters or Assured. The recommendations of the Committee shall be advisory to the Underwriter concerned and Assured. The Underwriter issuing a policy shall have full authority to settle all insured claims exclusive of all expenses, up to but not exceeding \$25,000, and such settlements shall be binding upon all the parties hereto. Settlements of any claim in excess of \$25,000, exclusive of all expenses, shall only be made upon approval of the War Shipping Administration. In the event of disclaimer of liability by the Underwriter under any policy issued pursuant to this Agreement nothing in the foregoing shall prejudice the right of the Assured under such policy.

[fol. 291]

XI

Either the United States, or the Underwriters collectively, may cancel this Agreement as to future attachments by giving thirty days' written notice, and such notice shall constitute a notice of cancellation under any and all policies and outstanding certificates of insurance issued pursuant hereto, in accordance with the terms thereof; in all other respects this agreement shall remain in effect for the adjustment and settlement of rights and liabilities in accordance with the provisions hereof. Cancellation by the "Assurer" under Paragraph 26 (a) of Part II hereof shall not be effective unless collective cancellation notice is also given as provided in the preceding sentence.

XII

The Underwriters may take out excess of loss reinsurance, and enter into among themselves a participating reinsurance agreement which shall be patent to the War Shipping Administration.

XIII

The obligations of the Marine Office Group resulting from any assumption of liability hereunder by the Group under the designation of "Underwriter" or "Underwriters", or otherwise, shall be separate and not joint, in the following proportions, to wit:

The American Insurance Company	15%
American Eagle Fire Insurance Company	8%
The Continental Insurance Company	18%
Fidelity-Phoenix Fire Insurance Company of New York	18%
Firemen's Insurance Company of Newark, New Jersey	15%
Glens Falls Insurance Company	18%
The Hanover Fire Insurance Company	8%

The obligations of the Fulton Group resulting from any assumption of liability hereunder by the Group under the designation of "Underwriter" or "Underwriters", or otherwise, shall be separate and not joint, in the following proportions, to wit:

Agricultural Insurance Company	12%
The Automobile Insurance Company of Hartford, Connecticut	20%
The Home Insurance Company, New York	20%
United States Fire Insurance Company	24%
Westchester Fire Insurance Company	24%

The obligations of the American Association and Fireman's Fund hereunder shall be separate and not joint.

The policies of insurance to be issued by the Marine Office Group and Fulton Group, as provided in Article III hereof, shall include appropriate clauses to effectuate the foregoing obligations.

XIV

(a) Each of the Underwriters warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul this agreement or, in its discretion, to deduct from any amount payable hereunder to the Underwriter guilty of such breach the amount of such commission, percentage, brokerage, or contingent fee.

[fol. 291a] (b) In any act performed under this agreement the Underwriters shall not discriminate against any citizen of the United States of America on the ground of race, creed, color or national origin.

XV

No person elected or appointed a member of or delegate to Congress or a Resident Commissioner, directly or indirectly, himself or by any other person in trust for him, or for his use or benefit, or on his account shall hold or enjoy this agreement in whole or in part, except as provided in Section 206, Title 18, U. S. C. None of the Underwriters shall employ any member of Congress, either with or without compensation, as an attorney, agent, officer, or director.

In witness whereof the parties hereto have caused these presents to be executed by their officers thereunto duly authorized the day and year herein first above written.

United States of America, by _____, Administrator, War Shipping Administration. American Steamship Owners Mutual Protection and Indemnity Association, Inc., by _____, Fireman's Fund Insurance Company, by _____.

Marine Office Group:

The American Insurance Company, by _____
 American Eagle Fire Insurance Company, by _____
 The Continental Insurance Company, by _____
 Fidelity-Phenix Fire Insurance Company, of New York, by _____
 Fireman's Insurance Company of Newark, New Jersey, by _____
 Glens Falls Insurance Company, by _____
 The Hanover Fire Insurance Company, by _____

Fulton Group:

Agricultural Insurance Company, by _____. The Automobile Insurance Company of Hartford, Connecticut, by _____. The Home Insurance Company, New York, by _____. United States Fire Insurance Company, by _____. Westchester Fire Insurance Company, by _____.

[fol. 292]

Wartimepandi Agreement

Part II

Wartimepandi Policy

— (Herein called the Assurer)

In consideration of the stipulation herein named and of premiums as agreed, does insure and cause to be insured The United States of America, acting by and through the Administrator, War Shipping Administration, and its General Agents and Agents under Service Agreements, Berth Agents and Sub-Agents acting on their behalf and Owners, hereinafter collectively called the Assured, in the maximum amount, in respect of each vessel insured hereunder, of \$175 per gross registered ton of any dry cargo or tank vessel completed prior to January 1, 1938, or \$250 per gross registered ton of any other vessel, including fully refrigerated vessels and seatrains, and not exceeding, in any event, \$2,000,000 in respect of any one accident or occurrence in connection with any one vessel, at and from the First day of December, 1942, at 12:01 A. M., E. W. T., unless otherwise agreed, until the first day of December, 1943, at 12:01 A. M., E. W. T., against the liabilities of the Assured as hereinafter described, and subject to the terms and conditions hereinafter set forth, in respect of vessels for which certificates of insurance are issued as hereinafter provided, which vessels are sometimes herein referred to as "insured vessels" or "vessels insured hereunder."

Loss, if any, to be payable to order of United States of America, represented by the Administrator, War Shipping Administration, except that claims not in excess of \$10,000 each shall be payable to order of the General Agent to whom the covering certificate of insurance is issued, unless the War Shipping Administration by written notice to the Assurer issues instructions to the contrary.

Upon application by the War Shipping Administration, or a General Agent thereof, for insurance hereunder with respect to any iron or steel ocean-going vessel of more than 1000 gross registered tons, of which the United States of America, acting by and through the Administrator, War Shipping Administration, is the owner, or bare boat charterer, a certificate of insurance, generally conforming to the form attached hereto, by which insurance hereunder will be extended to cover the Assured, will be issued in duplicate by the Assurer.

In respect of any vessel constructed for account of the United States of America, represented by the United States Maritime Commission, and the United States of America, represented by the Administrator, War Shipping Administration, and any other vessel of which the United States of America, represented by the Administrator, War Shipping Administration, becomes the owner or bare boat charterer, but which is not delivered to the War Shipping Administration by December 1, 1942, 12:01 A. M., E. W. T., for which an application for insurance hereunder is made, this insurance shall attach, unless otherwise agreed, on either of the following dates, whichever shall first occur: (a) the day that the first member of the crew engaged by or for Assured boards the vessel; or (b) the time when the vessel is delivered to the Assured.

Unless otherwise agreed this insurance shall not attach in respect of any vessel during any period she is chartered or [fol. 293] subchartered on a bare boat basis by the War Shipping Administration to the War Department, Navy Department, or other agency of the Government, or the Government of any Nation Signatory to the United Nations Pact, unless the vessel is manned by the War Shipping Administration.

Premiums hereunder shall be payable by the Assured quarterly in advance as to all vessels covered at the inception date of the policy; prorated to the next quarterly date with respect to coverages made thereafter; and then quarterly.

The assurer agrees to indemnify the assured against any loss, damage or expense which the assured shall become liable to pay and shall pay by reason of the fact that the assured is the owner, or bare boat charterer, or the general agent or agent or berth agent or subagent of the owner or bare boat charterer, (or mortgagee, trustee, or receiver thereof, as the case may be) of the insured vessel and which

shall result from the following liabilities, risks, events, occurrences or expenditures:

Loss of life, injury, and illness. (1) Liability for life salvage, loss of life of, or personal injury to, or illness of, any person, not including, however, unless otherwise agreed by endorsement hereon, liability to an employee (other than a seaman) of the assured, or in case of his death to his beneficiaries, under any compensation act, liability hereunder shall also include burial expenses not exceeding \$200, where reasonably incurred by the assured for the burial of any seaman. The term person as aforesaid shall include any person or persons carried on the insured vessel.

(a) Insurance hereunder, shall cover the liability of the Assured for claims under any Compensation Act (other than hereafter excepted), in respect of employees (i) who are members of the crew of the insured vessel, or (ii) who are placed on board the insured vessel with the intention of becoming a member of her crew, or (iii) who, in the event of the vessel being laid up and out of commission, are engaged in the upkeep, maintenance or watching of the insured vessel, or (iv) who are engaged by the insured vessel or its Master to perform stevedoring work in connection with the vessel's cargo at ports in Alaska and ports outside the Continental United States where contract stevedores are not readily available. This insurance, however, shall not be considered as a qualification under any Compensation Act, but, without diminishing in any way the liability of the Assurer under this policy, the Assured may have in effect policies covering such liabilities. All claims under such Compensation Acts for which the Assurer is liable under the terms of this policy are to be paid without regard to such other policies.

(b) Insurance hereunder shall not cover any liability under the provisions of the Act of Congress approved September 7th, 1916 and as amended, Public Act #267, Sixty Fourth Congress, known as the U. S. Employees Compensation Act.

(c) Insurance hereunder in connection with the handling of cargo for the insured vessel shall commence from the time of receipt by the Assured of the cargo on dock or wharf, or on craft alongside for loading, and shall continue until due

delivery thereof from dock or wharf of discharge or until discharge from the insured vessel on to a craft alongside.

(d) Claims hereunder, other than for burial expenses, are subject to a deduction of \$250 with respect to each accident or occurrence, 194—, 12:01 A. M., E. W. T., and expiring December 1, 1943, 12:01 A. M., E. W. T., unless previously cancelled in accordance with the terms of the Policy.

Premium Rate Total Prem. Now Due Due 3/1/43 Due 6/1/43 Due 9/1/43

— — —, by — — —

(Detachable Stub at Bottom of Certificate)

In event cancellation is to be made of this certificate the following form should be completed and returned to the Assurer(s) for issuance of cancellation endorsement:

Vessel Name — — —. Entry No. — — —. Effective Date of Cancellation — — —. Reason for Cancellation — — —. Name New General Agent — — —. Signature General Agent Requesting Cancellation — — —.

Wartimepandi Agreement

Addendum No. 1

Addendum to Agreement herein referred to as the Principal Agreement, made as of the 1st day of December, 1942, by and between the United States of America, acting by and through the Administrator, War Shipping Administration, herein referred to as the "United States", and American Steamship Owners Mutual Protection and Indemnity Association, Inc., herein referred to as "American Association", Fireman's Fund Insurance Company, herein referred to as "Fireman's Fund", and The American Insurance Company, American Eagle Fire Insurance Company, The Continental Insurance Company, Fidelity-Phenix Fire Insurance Company of New York, Firemen's Insurance Company of Newark, New Jersey, Glens Falls Insurance Company, and The Hanover Fire Insurance Company, herein referred to as "Marine Office Group", and Agricultural Insurance Company, The Automobile Insurance Company

of Hartford, Connecticut, The Home Insurance Company, New York, United States Fire Insurance Company, and Westchester Fire Insurance Company, herein referred to as "Fulton Group",

Witnesseth: The parties hereto mutually agree that said Principal Agreement and the policies issued pursuant thereto shall be deemed amended as hereinafter provided:

I

The words "iron and (or) steel ocean-going vessels of more than 1,000 gross registered tons" appearing in the Principal Agreement and the policies issued pursuant thereto shall be amended to read "iron, steel and concrete ocean-going and Great Lakes vessels (excluding tugs, barges and sailing vessels) of more than 1,000 gross registered tons"; provided, however, that the initial annual premium for each concrete dry cargo vessel insured hereunder shall be at the rate of \$2.15 per gross registered ton, prorated from the date of attachment to December 1, 1943.

II

The Underwriters, by mutual agreement, may insure under the Principal Agreement any vessel in respect of which the United States has an insurable interest, by endorsement initialed by the Underwriters, attached to the covering policy, setting forth any terms and conditions which modify the Principal Agreement or policy.

III

There shall be attached, or deemed to be attached, to each policy issued under the Principal Agreement, an endorsement reading as follows:

"Effective from December 1, 1942, 12:01 A.M. Eastern War Time:

"No liability shall attach to the Assurer(s) for any loss, damage or expense under paragraphs (3) and (7) in respect of lend lease cargo and cargo owned by the United States or any agency or department thereof, including, but not limited to, the War Department, Navy Department, Metal Reserves Company, Rubber Reserves Company, Defense Supplies Corporation and Reconstruction Finance Corporation;

"No liability shall attach to the Assurer(s) under this policy for any loss, damage or expense in respect of claims, recoveries or other matters which are waived, or the defense or settlement of which is assumed (including, but not limited to, claims involving privately owned fixed objects or property) by and under the Agreement made as of December 4, 1942, by and between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland."

In consideration of the foregoing endorsement, Article VI of the Principal Agreement shall be amended to read as follows:

"The United States shall pay, quarterly in advance to the Underwriter making insurance pursuant hereto, an initial annual premium at the rate of 70¢ per gross registered ton for each insured tank vessel, and \$1.40 per gross registered ton for each insured iron and steel ocean-going or Great Lakes vessel of more than 1000 gross registered tons, in respect of which certificates of insurance have been issued as provided in Article II hereof. The premium for any insurance attaching after December 1, 1942, shall be pro-rated from the date of attachment to December 1, 1943."

IV

Article IX of the Principal Agreement shall be amended to read as follows:

"(a) Any General Agent and/or Berth Sub-Agent of the United States insured hereunder, unless otherwise agreed, shall be authorized to settle directly, or approve settlement of, cargo claims up to \$1,000 in the aggregate and in excess thereof up to \$100 in respect of any one cargo claim under [fol. 296] any one bill of lading, but in no event shall the authority hereunder exceed in all \$3,500 on any one voyage, provided, however, that the combined authority to all Agents shall not exceed \$3,500 on any one voyage.

"(b) Any General Agent of the United States insured hereunder, unless otherwise agreed, shall be authorized to settle directly, or approve settlement of

- (i) life, injury or illness claims up to \$250 each and;
- (ii) all other claims up to \$100 each.

"(c) Settlement of claims by Agents under the authority provided in (a) and (b) above shall not be deemed an ad-

mission of the Underwriters' liability under the terms of the policy of insurance issued pursuant to this Agreement.

"(d) An Assured, at any time, may ask for, and the Underwriter shall give advice and assistance in respect of any claim arising from an insured risk, regardless of the amount."

V

There shall be attached, or deemed to be attached, to each policy issued under the Principal Agreement, an endorsement reading as follows:

"Notwithstanding any thing to the contrary contained in paragraph (20), liability under paragraph (1) shall be extended to cover claims of seamen under any Workmen's Compensation Act whether the liability of the Assured for such claims arises under contract or otherwise.

"Paragraph (5) (b) is hereby amended to read as follows:

"Insurance hereunder shall cover all liabilities for said damages that the insured vessel or her owners would have if she were privately owned by an American citizen regardless of the Assured's right to claim sovereign immunity or immunity to suit, and irrespective of the ownership of any object or property the vessel may damage, whether movable or fixed, provided, however, that the rights of the Assured shall be the same as though the vessel were privately owned."

"Notwithstanding anything to the contrary contained in Paragraph (26) (d), if a newly constructed insured vessel is chartered or sub-chartered on a bareboat basis by the War Shipping Administration to the War Department, Navy Department, or other Agency of the Government, or the Government of any Nation signatory to the United Nations Pact, and not manned by the War Shipping Administration, under circumstances where the said vessel has never been operated or navigated on any ocean voyage, the certificate issued in connection therewith may be surrendered and cancelled, and premium shall be calculated on a prorata basis of 15-day periods (i. e. if such a vessel is on risk for less than 15 days, prorata premiums for 15 days shall be paid; if such a vessel is on risk for more than 15 days but less than 30 days, prorata premiums for two 15-day periods shall be paid, and so on), and returns shall be allowed only on such basis; provided, however, that such

vessel shall not be entitled to lay up returns as provided in Paragraph (25)."

[fol. 297] In Witness Whereof the parties hereto have caused these presents to be executed by their officers thereunto duly authorized this day of — —, 1943.

United States of America, by E. S. Land, Administrator, War Shipping Administration; by — —, Director of Wartime Insurance.

American Steamship Owners Mutual Protection and Indemnity Association, Inc., By — — ; Fireman's Fund Insurance Company, by — — .

Marine Office Group: The American Insurance Company, American Eagle Fire Insurance Company, The Continental Insurance Company, Fidelity-Phenix Fire Insurance Company of New York, Firemen's Insurance Company of Newark, New Jersey; Glens Falls Insurance Company, The Hanover Fire Insurance Company, By S. D. McComb, Agent for Marine Office Group; by — — .

Fulton Group: Agricultural Insurance Company, The Automobile Insurance Company of Hartford, Connecticut; The Home Insurance Company, New York; United States Fire Insurance Company, Westchester Fire Insurance Company; By Fulton Shipoperators P. & I. Service, Inc., Agent for Fulton Group; by — — .

WARTIME P&I AGREEMENT (12/1/42)

Addendum No. 2

Addendum to Agreement, herein referred to as the Principal Agreement, made as of the 1st day of December, 1942, by and between the United States of America, acting by and through the Administrator, War Shipping Administration, herein referred to as the "United States", and American Steamship Owners Mutual Protection and Indemnity Association, Inc., herein referred to as "American Association", Fireman's Fund Insurance Company, herein referred to as "Fireman's Fund", and The American Insurance Company, American Eagle Fire Insurance Company, the Continental Insurance Company, Fidelity-Phenix Fire Insurance Company of New York, Firemen's Insurance Company of Newark, New Jersey, Glens Falls Insurance Company, and the Hanover Fire Insurance Company, herein

referred to as "Marine Office Group", and Agricultural [fol. 298] Insurance Company, the Automobile Insurance Company of Hartford, Connecticut, the Home Insurance Company, New York, United States Fire Insurance Company, and Westchester Fire Insurance Company, herein referred to as "Fulton Group";

Witnesseth:

The parties hereto mutually agree that said Principal Agreement and policies issued pursuant thereto shall be amended as hereinafter provided:

I

New provisions are hereby incorporated in and made a part of subparagraph (b) of Paragraph A of Article VII of the Principal Agreement, effective from its inception, to be designated (vii) and (viii), reading as follows:

"(vii) Losses paid on disputed claims determined to be covered under policies, and loss expenses including costs of defense incurred in respect of disputed claims regardless of whether or not such claims are determined to be covered under this agreement and policies issued pursuant thereto. The term 'disputed claims' shall mean claims for which the Underwriters have denied liability;

"(viii) All losses and expenditures not otherwise included herein mutually agreed upon by the United States and the Underwriters."

II

A new provision is hereby incorporated in and made a part of Article VII of the Principal Agreement, effective from its inception, to be designated Paragraph H, reading as follows:

"The excess of receipts by all the Underwriters under A (a) above over the total expenditures by all the Underwriters under A (b) above which the Underwriters shall retain under this agreement, in respect of their 10% interests under B above, shall in no event exceed \$300,000.00, and any excess over said amount shall be refunded to the United States on the final accounting under this agreement, 25% of such excess being paid by each Underwriter."

III

The policies of insurance issued under Part II of the Principal Agreement are hereby amended, effective from their inception, by deleting Clause (d) of Paragraph 27, and incorporating a new paragraph, to be designated Paragraph 28, reading as follows:

“28 (a) Notwithstanding anything to the contrary contained in this policy, the Assurer shall not be liable for or in respect of any loss, damage or expense sustained by reason of capture, seizure, arrest, restraint or detainment or the consequences thereof or of any attempt thereat; or sustained in consequence of military, naval or air action by force of arms, including mines and torpedoes or other missiles or engines of war, whether of enemy or friendly origin; or sustained in consequence of the explosion of ammunition or other [fol. 299] explosive material intended for military use (other than petroleum products) unless the explosion is caused by collision between the vessel named herein and a vessel other than an enemy naval vessel; or sustained in consequence of placing the vessel in jeopardy as an act or measure of war taken in the actual process of a military engagement, including embarking or disembarking troops or material of war in the immediate zone of such engagement; and any such loss, damage and expense shall be excluded from this policy without regard to whether the Assured's liability therefor is based on negligence or otherwise, and whether before or after a declaration of war.

“(b) No liability shall attach to the Assurer for any loss, damage or expense in respect of any claim for loss of life of, or personal injury to, or illness of, or any baggage or personal effects of, any member of the armed forces of the United States on board a military or naval vessel manned by and under the control of military or naval personnel of the United States and arising out of collision with the vessel named herein.”

IV

A new provision is hereby incorporated in and made a part of the Principal Agreement, effective from its inception, to be designated Article XVI, reading as follows:

"The Administrator, by virtue of the authority vested in him by Section 403 of the 6th Supplemental National Defense Appropriation Act, 1942 (Public, 528, 77 Congress), as amended and acting pursuant to delegation of authority by the War Contracts Price Adjustment Board to the Administrator by instrument dated February 26, 1944, having found that the profits hereunder can now be determined with reasonable certainty and that the provisions of this contract adequately prevent excessive profits, this contract (including the compensation herein provided) is hereby exempted from the provisions of said Section 403, as amended, and of the Renegotiation Act as amended by Section 701 (b) of the Revenue Act of 1943 (Public 235, 78 Congress), pursuant to subsection (i) (2) of said Section 403, as amended, and subsection (i) (4) of the said Renegotiation Act, as amended."

In witness whereof the parties hereto have caused these presents to be executed by their officers and agents thereunto duly authorized as of the 1st day of January 1945.

United States of America, by — — —, Administrator War Shipping Administration, by — — —, Director of Wartime Insurance.

American Steamship Owners Mutual Protection and Indemnity Association, Inc., by — — —, Fireman's Fund Insurance Company, by — — —.

[fol. 300] Marine Office Group: The American Insurance Company, by — — —, American Eagle Fire Insurance Company, by — — —, The Continental Insurance Company, by — — —, Fidelity-Phenix Fire Insurance Company of New York, by — — —, Firemen's Insurance Company of Newark, New Jersey, by — — —, Glens Falls Insurance Company, by — — —, The Hanover Fire Insurance Company, by — — —.

Fulton Group: Agricultural Insurance Company, by — — —; The Automobile Insurance Company of Hartford, Connecticut, by — — —, The Home Insurance Company,

New York, by _____, United States Fire Insurance Company, by _____, Westchester Fire Insurance Company, by _____.

e. Wartimepandi Agreement of December 1, 1943 (Parts I and II and Addenda No. 1, No. 2 and No. 3)¹

Wartimepandi Agreement

Part I

This agreement, consisting of Parts I and II, made as of the 1st day of December, 1943, by and between the United States of America, acting by and through the Administrator, War Shipping Administration, herein referred to as the "United States", and American Steamship Owners Mutual Protection and Indemnity Association, Inc., herein referred to as "American Association", Fireman's Fund Insurance Company, herein referred to as "Fireman's Fund", and The American Insurance Company, American Eagle Fire Insurance Company, The Continental Insurance Company, Fidelity-Phenix Fire Insurance Company of New York, Fireman's Insurance Company of Newark, New Jersey, Glens Falls Insurance Company, and The Hanover Fire Insurance Company, herein referred to as "Marine Office-Group", and Aetna Insurance Company, Agricultural Insur-

¹ This agreement and Addenda No. 1 (at page 821), No. 2 (at page 836) and No. 3 (at page 839) renews the commercial marine protection and indemnity insurance on vessels owned by or bareboat chartered to WSA, for the period December 1, 1943, to December 1, 1944. Addendum No. 2 brings time chartered vessels under the agreement, in accordance with the revised chartering program. This agreement was extended to January 1, 1945. Certain of the provisions have been the subject of clarifying and modifying letters. (For 1942 agreements, see page 775 et seq.)

[fols. 301-302] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioner,

It Is Ordered that the time for filing a petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including Sept. 20th, 1948, providing the statutory time has not already expired.

Fred M. Vinson, Chief Justice of the United States.

Dated this 9th day of August, 1948.

[fols. 303-304] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(x),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 18, 1948.

Robert H. Jackson, Associate Justice of the Supreme Court of the United States.

Dated this 16 day of September, 1948.

[fol. 305] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION DESIGNATING PORTIONS OF RECORD TO BE PRINTED—Filed September 30, 1948

For the purposes of Rule 38.8 of the Rules of the Supreme Court of the United States, it is hereby stipulated that the entire record, as filed in this Court, is deemed necessary to be printed for consideration of a petition for writ of certiorari, with the following exceptions, which are to be omitted:

1. All captions on pleadings, motions, orders, opinions and other documents, to the extent deemed to be good practice by the Clerk of the above entitled Court.

2. Page 4, consisting of the backing on the amended complaint.
3. Page 12, line 10, to p. 16, l. 9, inc., consisting of an alternative motion for new trial.
4. Pages 17 to 20, inc., consisting of a letter by the trial judge, also set forth elsewhere in said record.
5. Page 23, l. 26, to p. 26, to, but not omitting, the last paragraph of page 26, consisting of portions of the opinion of the trial judge.
6. Pages 88 to 100, inc., consisting of portions of the bill of exceptions, elsewhere set forth in said record.
7. Page 102, consisting of a certain stipulation.
8. Section 16(b) of the praecipe to the Clerk of the Supreme Court of the State of Oregon shall be omitted following the words "The following portions of the Transcript of Testimony:", with appropriate designation to indicate that the remainder of item 16(b) has been omitted.

With reference to exhibits, it is stipulated as follows:

1. That all exhibits included in the bound record as filed in this Court shall be printed, the same consisting of Plaintiff's Exhibits 2, 3, 4 and 11 and Defendant's Exhibits B (page 85), E, G, H, J and S (Exhibit "I", erroneously marked "S").
2. That the designation of said Defendant's Exhibit "S", on page 82 of said record and in the index thereof, shall be corrected by changing the same to Defendant's Exhibit "I."
3. That the exhibit appearing on page 85, consisting of a certificate of discharge, shall be designated Defendant's "Exhibit B".
4. That none of the exhibits included by the Clerk of the Supreme Court of the State of Oregon in their original form and under separate certificate shall be printed, the same being Defendant's Exhibit A and Plaintiff's Exhibits 1, 5, 6, 7, 8, 9, 10, 12 and 13, but that all of said exhibits shall remain as parts of the record in the case, and that any portions of said exhibits may be referred to by the Court or by either party in briefs or in arguments.
5. That Defendant's Exhibits D, F, K and L, which were originally omitted by the Clerk of the Supreme Court of the

State of Oregon in preparing said record and are being forwarded under an amended separate certificate to the Clerk of this Court, are to be printed as parts of the record herein with the following exceptions:

(a) With reference to Defendant's Exhibit F, consisting of certain shipping articles, a photostatic copy may be included, or, if printed, the following portions of said exhibit may be omitted:

1. The table on page 1 entitled "Scale of Provisions, etc.", and the first two paragraphs under the heading "Substitutes", on page 1.

2. It is stipulated that following the typed insert signed by Thomas C. Price as master, on page 1 of said exhibit, and in lieu of the portions of said exhibit partially covered by said insert, the following shall be printed:

[fol. 307] "In Witness Whereof, the said parties have subscribed their names hereto on the days against their respective signatures mentioned."

(Signed) Thomas C. Price, Master, of 345 Florence Street, Manaroneck, N. Y., on the 8th day of June, 1943."

3. Omit all foot-notes on page 1 and the lines following the same, inserting appropriate designation to indicate that a portion of the document has been omitted.

4. The column of the names of seamen who signed on page 2 of said exhibit (i. e., the page containing the signature of Fred W. Fink); and the column entitled "In What Capacity", shall be printed, but all other columns shall be omitted, with appropriate designations to indicate that such columns have been omitted.

5. Pages 3 and following shall be omitted, except the letter on page 3, dated September 10, 1943, from the War Shipping Administration to the U. S. Coast Guard.

6. All omitted portions of said exhibit shall remain as parts of the record of said case and may be referred to by the Court or by the parties in briefs or in arguments.

(b) With reference to Defendant's Exhibit D, the form of agreement entitled "Service Agreement For Vessels of which the War Shipping Administration is Owner or Owner Pro Hac Vice", consisting of eight pages; an exhibit and certificate; and the form of agreement entitled

"Service Agreement for Vessels Time Chartered From Others by the War Shipping Administration", consisting of eleven pages and a certificate, may be omitted in printing, but the said forms of agreement shall remain as parts of the record of said case and may be referred to by the Court or by either party in briefs or in arguments.

(c) With reference to Defendant's Exhibit K, only the original copy thereof need be printed.

6. That Defendant's Exhibit C was also omitted by the Clerk of the Supreme Court of the State of Oregon in preparing said record, and that the following document, attached hereto and marked "Defendant's Exhibit C", is a true copy of said exhibit and should be printed as a part of the record herein.

It is stipulated that in determining the appropriate place in said record in which to print the above designated exhibits and portions thereof, as well as the other portions of the record in this case, the Clerk of the above entitled Court shall exercise his discretion in accordance with the established custom and practice of said Court, but that in the absence of such custom or practice said exhibits shall be appended at the back of said record rather than inserted in the transcript of testimony at the points where said exhibits were admitted into evidence.

Dated September 28, 1948.

Edwin D. Hicks, of Attorneys for Petitioner;
Erskine B. Wood, of Attorneys for Respondent.

[fol. 309] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 22, 1948

The petition herein for a writ of certiorari to the Supreme Court of the State of Oregon is granted. The case is transferred to the summary docket and assigned to follow Nos. 179 and 351.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.